

इसे वेबसाईट www.govtpress.mp.gov.in
से भी डाउन लोड किया जा सकता है.



मध्यप्रदेश राजपत्र

(असाधारण)
प्राधिकार से प्रकाशित

क्रमांक 236]

भोपाल, सोमवार, दिनांक 27 जुलाई 2026—श्रावण 5, शक 1948

विधि और विधायी कार्य विभाग

भोपाल, दिनांक 27 जुलाई 2026

क्र. 7111-129-इक्कीस-अ (प्रा.)- भारत के संविधान के अनुच्छेद 348 के खण्ड (3) के अनुसरण में, मध्यप्रदेश समान नागरिक संहिता विधेयक, 2026 (क्रमांक 12 सन् 2026) का अंग्रेजी अनुवाद राज्यपाल के प्राधिकार से एतद्वारा प्रकाशित किया जाता है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
निशीथ खरे, अतिरिक्त सचिव.

MADHYA PRADESH BILL

NO. 12 OF 2026

THE MADHYA PRADESH UNIFORM CIVIL CODE, 2026**TABLE OF CONTENT****Clauses:****PRELIMINARY**

1. Short title, extent and commencement.
2. Non-applicability of Code to Scheduled Tribes and other groups of persons.
3. Definitions.

PART-1**MARRIAGE AND DIVORCE****CHAPTER I****CONDITIONS FOR SOLEMNIZING/CONTRACTING
MARRIAGE**

4. Conditions for a valid marriage.
5. Ceremonies for marriage.

CHAPTER II**REGISTRATION OF MARRIAGE AND DIVORCE**

6. Compulsory registration of marriage solemnized/contracted after the commencement of Code.
7. Registration of marriage solemnized/contracted before commencement of code.
8. Registration of decree of divorce or nullity, which has attained finality, after the commencement of Code.
9. Registration of decree of divorce or nullity, which has attained finality, before the commencement of Code.
10. Period and procedure for registration of marriage under section 6 and 7.
11. Period and procedure for registration of decree of divorce or nullity under section 8 and 9.
12. Appointment of Registrar General and Registrar.
13. Action on receipt of memorandum under section 10 or section 11.
14. Cancellation of registration and appeal against registration.
15. Inspection of Registers.
16. Evidentiary value of certain documents.
17. Penalty for neglect and punishment for false statement.
18. Procedure in case of non-registration.
19. Penalty for inaction by Registrar and appeal against penalty.
20. Non-registration not to invalidate marriage.
21. Responsibility of employer etc. regarding verification of marriage registration certificate.

22. Punishment for concealing, destroying or altering register.
23. Registrar to be public servant.
24. Indemnity to persons acting under the Code.
25. Power of State Government to give directions.

CHAPTER III

RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION

26. Restitution of conjugal rights.
27. Judicial separation.

CHAPTER IV

NULLITY OF MARRIAGE AND DIVORCE

28. Void marriages.
29. Voidable marriages.
30. Limitation on filing a petition for decree of divorce or nullity of marriage.
31. Divorce.
32. Alternate relief in divorce proceedings.
33. Divorce by mutual consent.
34. Restriction on petition for divorce, within one year of marriage.
35. Prohibition on dissolution of marriage.
36. Right of person to remarry where a decree of divorce or nullity of marriage is passed.
37. Legitimacy of children of divorce and voidable marriages.
38. Punishment for contravention of certain provisions.

CHAPTER V

INCIDENTAL PROCEEDINGS

39. Maintenance *pendent lite* and expenses of proceedings.
40. Permanent alimony and maintenance.
41. Custody and care of children.
42. Disposal of estate.

CHAPTER VI

JURISDICTION AND PROCEDURE

43. Courts to which petition shall be presented.
44. Pleadings under this Part.
45. Procedure for proceedings in the court under this Part.
46. Power to transfer petitions in certain cases.
47. Special provisions relating to trial and disposal of petitions under this Part.
48. Documentary evidence.
49. Decree in proceedings.
50. Relief to respondent in divorce and other proceedings.
51. Power to punish and procedure therefor.

**CHAPTER VII
SUPPLEMENTAL PROVISIONS**

- 52. Appeals from decrees and orders.
- 53. Enforcement of decrees and orders.
- 54. Power to make rules.

**PART – 2
SUCCESSION
CHAPTER I**

INTESTATE SUCCESSION

- 55. General rules of succession.
- 56. Manner of succession.
- 57. Distribution of estate amongst Class- 1 heirs.
- 58. Distribution of estate amongst the Class – 2 heirs.
- 59. Distribution of estate amongst other relatives.
- 60. Computation of degrees.
- 61. Right of child in womb.
- 62. Presumption in cases of simultaneous deaths.
- 63. Disqualification upon remarriage.
- 64. Murderer disqualified.
- 65. Succession when heir disqualified.
- 66. Disease, defect or deformity not to disqualify.

**CHAPTER II
TESTAMENTARY SUCCESSION**

- 67. Person capable of making Wills.
- 68. Will obtained by fraud, coercion or importunity.
- 69. Will may be revoked or altered.
- 70. Execution of Wills.
- 71. Incorporation of papers by reference.
- 72. Witness not disqualified by interest or by being executor.
- 73. Revocation of Will or codicil.
- 74. Effect of obliteration, interlineation or alteration of unprivileged Will.
- 75. Revival of unprivileged Will.
- 76. Wording of Wills.
- 77. Inquiries to determine questions, as to object or subject of Will.
- 78. Misnomer or mis-description of object.
- 79. When words may be supplied.
- 80. Rejection of erroneous particulars in description of subject.
- 81. When part of description may not be rejected as erroneous.
- 82. Extrinsic evidence admissible in cases of patent ambiguity.

83. Extrinsic evidence inadmissible in case of patent ambiguity or deficiency.
84. Meaning of clause to be collected from entire Will.
85. When words may be understood in restricted sense and when in sense wider than usual.
86. Which of two possible constructions preferred.
87. No part rejected, if it can be reasonably construed.
88. Interpretation of words repeated in different parts of Will.
89. Testator's intention to be effectuated, as far as possible.
90. The last two inconsistent clauses prevails.
91. Will or bequest void for uncertainty.
92. Words describing subject refer to estate answering description at testator's death.
93. Power of appointment executed by general bequest.
94. Implied gift to objects of power in default of appointment.
95. Bequest to heirs, etc. of particular person without qualifying terms.
96. Bequest to 'representatives' etc. of particular person.
97. Bequest without words of limitation.
98. Bequest in alternative.
99. Effect of words describing a class added to person.
100. Bequest to class of persons under general description only.
101. Construction of terms.
102. Rules of construction, where Will purports to make bequests to same person.
103. Constitution of residuary legatee.
104. Estate to which residuary legatee entitled.
105. Time of vesting legacy in general terms.
106. In what case legacy lapses.
107. Legacy does not lapse, if one of two joint legatees dies before testator.
108. Effect of words showing testator's intention to give distinct shares.
109. When lapsed share goes as undisposed of.
110. When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.
111. Bequest to A for benefit of B does not lapse by A's death.
112. Survivorship in case of bequest to described class.
113. Bequest to person by particular description, who is not in existence at testator's death.
114. Bequest to person not in existence at testator's death subject to prior bequest.
115. Rule against perpetuity.
116. Bequest to a class, some of whom may come under rules in Sections 114 and 115.
117. Bequest to take effect on failure of prior bequest.
118. Effect of direction for accumulation.
119. Date of vesting of legacy, when payment or possession postponed.

120. Date of vesting, when legacy contingent upon specified uncertain event.
121. Vesting of interest in bequest to such members of a class, as shall have attained particular age.
122. Onerous bequests.
123. One of two separate and independent bequests to same person, may be accepted and other refused.
124. Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.
125. Bequest to such of certain persons, as shall be surviving at some period not specified.
126. Bequest upon impossible condition.
127. Bequest upon illegal or immoral condition.
128. Fulfilment of condition precedent to vesting of legacy.
129. Bequest to 'A' and on failure of prior bequest to 'B'.
130. When second bequest not to take effect on failure of first.
131. Bequest over, conditional upon happening or not happening of specified uncertain event.
132. Condition must be strictly fulfilled.
133. Original bequest not affected by invalidity of second.
134. Bequest conditioned that it shall cease to have effect in case of specified uncertain event shall happen or not happen.
135. Such condition must not be invalid under Section 120.
136. Result of legatee rendering impossible or indefinitely postponing act.
137. Performance of condition precedent or subsequent, within specified time.
138. Direction that fund may be employed in particular manner, following absolute bequest of same to or for benefit of any person.
139. Direction that mode of enjoyment of absolute bequest to be restricted, to secure specified benefit for legatee.
140. Bequest of fund for certain purpose, some of which cannot be fulfilled.
141. Legatee named as executor cannot take the legacy, unless he shows intention to act as executor.
142. Specified legacy defined.
143. Bequest of certain sum, where stocks etc. in which invested are described.
144. Bequest of stock, where testator had, at date of Will, equal or greater amount of stock of same kind.
145. Bequest of money where not payable until part of testator's estate disposed of in certain way.
146. When enumerated articles not deemed specifically bequeathed.
147. Retention in form of specific bequest to several persons in succession.
148. Sale and investment of proceeds of estate bequeathed to two or more persons in succession.
149. Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.
150. Demonstrative legacy not defined.
151. Order of payment, when legacy directed to be paid out of fund, subject to specific legacy.
152. **Ademption explained.**

153. Non-ademption of demonstrative legacy.
154. Ademption of specific bequest of right to receive something from third party.
155. Ademption *pro tanto* by testator's receipt of entire thing specifically bequeathed.
156. Ademption *pro tanto* by testator's receipt of entire fund, of which portion has been specifically bequeathed.
157. Order of payment, where portion of fund specifically bequeathed to one legatee and legacy charged on same fund to another.
158. Ademption, where stock, specifically bequeathed does not exist at testator's death.
159. Ademption *pro tanto*, where stock, specifically bequeathed, exists in part, only at testator's death.
160. Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.
161. When removal of thing bequeathed does not constitute ademption.
162. When thing bequeathed is a valuable to be received by testator from third person and testator himself or his representative receives it.
163. Change by operation of law of subject of specific bequest between date of Will and testator's death.
164. Change of subject without testator's knowledge.
165. Stock specifically bequeathed lent to third party on condition, that it be replaced.
166. Stock specifically bequeathed sold but replaced and belonging to testator at his death.
167. Non-liability of executor to exonerate specific legatees.
168. Completion of testator's title to things bequeathed to be at the cost of his estate.
169. Exoneration of legatee's immovable estate, for which land revenue or rent payable periodically.
170. Exoneration of specific legatee's stock in joint stock company.
171. Bequest of thing described in general terms.
172. Bequest of interest or produce of fund.
173. Annuity created by Will payable for life only, unless contrary intention appears by Will.
174. Period of vesting, where Will directs that annuity be provided out of proceeds of estate or out of estate generally or where money bequeathed to be invested in purchase of annuity.
175. Abatement of annuity.
176. Where gift of annuity and residuary gift, whole annuity to be first satisfied.
177. Creditor *prima facie* entitled to legacy as well as debt.
178. Child *prima facie* entitled to legacy as well as portion.
179. No ademption by subsequent provision for legatee.
180. Circumstances in which election takes place.
181. Devolution of interest relinquished by owner.
182. Testator's belief, as to his ownership immaterial.
183. Bequest for person's benefit how regarded for purpose of election.
184. Person deriving benefit indirectly not put to election.

185. Person taking in individual capacity under Will may in other character elect to take in opposition.
186. Exception to provisions of last six sections.
187. When acceptance of benefit given by Will constitutes election to take under Will.
188. Circumstances, in which knowledge or waiver is presumed or inferred.
189. When testator's representatives may call upon legatee to elect.
190. Postponement of election in case of disability.
191. Estate transferable by gift made in contemplation of death.

CHAPTER III

PROTECTION OF ESTATE OF DECEASED

192. Person claiming right by succession to estate of deceased may apply for relief against wrongful possession.
193. Inquiry made by Judge.
194. Procedure.
195. Appointment of curator pending determination of proceedings.
196. Powers conferrable on curator.
197. Prohibition of exercise of certain powers by curator.
198. Curator to give security and may receive remuneration.
199. Report from Collector, where estate includes revenue paying land.
200. Institution and defence of suits.
201. Allowances to apparent owners pending custody by curator.
202. Accounts to be filed by curator.
203. Inspection of accounts and right of interested party to keep duplicate.
204. Bar to appointment of second curator for same estate.
205. Limitation of time for application for curator.
206. Bar to enforcement of the Chapter against public settlement or legal directions by deceased.
207. Saving of right to bring suit.
208. Effect of decision of summary proceeding.
209. Appointment of public curators.

CHAPTER IV

REPRESENTATIVE TITLE TO ESTATE OF DECEASED ON SUCCESSION

210. Character and estate of curator or administrator as such.
211. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.
212. Effect on certificate of subsequent probate or letters of administration.
213. Grantee of probate or administration alone to sue etc., until same revoked.

CHAPTER V
PROBATE, LETTERS OF ADMINISTRATION AND
ADMINISTRATION OF ASSETS OF DECEASED

214. Application of this Chapter.
215. To whom administration may be granted.
216. Effect of letters of administration.
217. Acts not validated by administration.
218. Probate only to appointed executor.
219. Persons, to whom probate cannot be granted.
220. Grant of probate to several executors simultaneously or at different times.
221. Separate probate of codicil discovered after grant of probate.
222. Accrual of representation to surviving executor.
223. Effect of probate.
224. Administration with copy annexed, of authenticated copy of Will proved abroad.
225. Grant of administration, where executor has not renounced.
226. Form and effect of renunciation of executorship.
227. Procedure, where executor renounces or fails to accept within time limited.
228. Grant of administration to universal or residuary legatees.
229. Right to administration of representative of deceased residuary legatee.
230. Grant of administration, where no curator, nor residuary legatee, nor representative of such legatee.
231. Citation before grant of administration to legatee other than universal or residuary.
232. To whom administration may not be granted.
233. Laying of rules before the State Legislature.
234. Probate of copy or draft of lost Will.
235. Probate of contents of lost or destroyed Will.
236. Probate of copy where original exists.
237. Administration until Will produced.
238. Administration, with Will annexed to attorney of absent executor.
239. Administration, with Will annexed to attorney of absent person who, if present, would be entitled to administer.
240. Administration to attorney of absent person entitled to administer in case of intestacy.
241. Administration during minority of sole executor or residuary legatee.
242. Administration during minority of several executors or residuary legatees.
243. Administration for use and benefit of lunatic or minor.
244. Administration *pendente lite*.
245. Probate limited to purpose specified in Will.

246. Administration with Will annexed, limited to particular purpose.
247. Administration limited to estate in which person has beneficial interest.
248. Administration limited to suit.
249. Administration limited to purpose of becoming party to suit to be brought against administrator.
250. Administration limited to collection and preservation of deceased's estate.
251. Appointment as administrator, of persons other than one, in ordinary circumstances, would be entitled to administration.
252. Probate or administration with Will annexed, subject to exception.
253. Administration with exception.
254. Probate or administration of rest.
255. Grant of effects unadministered.
256. Rules as to grants of effects unadministered.
257. Administration, when limited grant expired and still some part of estate unadministered.
258. What errors may be rectified by court.
259. Procedure, where codicil discovered after grant of administration with Will annexed.
260. Revocation or annulment for just cause.
261. Jurisdiction of District Judge in granting and revoking probates etc.
262. Power to appoint delegate of District Judge to deal with non-contentious cases.
263. District Judge's powers as to grant of probate and administration.
264. District Judge may order person to produce testamentary papers.
265. Proceedings of District Judge's court in relation to probate and administration.
266. When and how District Judge to interfere for protection of estate.
267. When probate or administration may be granted by District Judge.
268. Disposal of application made to Judge of District, in which deceased had no fixed abode.
269. Probate and letters of administration may be granted by Delegate.
270. Conclusiveness of probate or letters of administration.
271. Transmission to High Courts of certificate of grants under proviso to section 270.
272. Conclusiveness of application for probate or administration if properly made and verified.
273. Petition for probate.
274. In what cases translation of Will to be annexed to petition.
275. Petition for letters of administration.
276. Addition to statement in petition etc.
277. Petition for probate etc. to be signed and verified.
278. Verification of petition for probate, by one witness to Will.
279. Punishment for false averment in petition or declaration.
280. Powers of District Judge.

281. Caveats against grant of probate or administration.
282. After entry of caveat, no proceeding taken on petition, until after notice to caveator.
283. District Delegate when not to grant probate or administration.
284. Power to transmit statement to District Judge in doubtful cases, where no contention.
285. Procedure where there is contention or District Judge thinks probate or letters of administration should be refused.
286. Grant of probate to be under seal of court.
287. Grant of letters of administration to be under seal of court.
288. Administration Bond.
289. Assignment of administration bond.
290. Time for grant of probate and administration.
291. Filing of original Wills of which probate or administration with Will, annexed granted.
292. Procedure in contentious cases.
293. Surrender of revoked probate or letters of administration.
294. Payment to executor or administrator before probate or administration revoked.
295. Power to refuse letters of administration.
296. Appeals from orders of District Judge.
297. Removal of executor or administrator and provision for successor.
298. Directions to executor or administrator.
299. Executor of his own wrong.
300. Liability of executor of his own wrong.
301. In respect of causes of action surviving deceased and debts due at death.
302. Demands and rights of action of or against deceased survive and against executor or administrator.
303. Power of executor or administrator to dispose of estate.
304. General powers of administration.
305. Purchase by executor or administrator of deceased's estate.
306. Powers of several executors or administrators exercisable by one.
307. Survival of powers on death of one of several executors or administrators.
308. Powers of administrator of effects unadministered.
309. Powers of administrator during minority.
310. Powers of married executrix or administratrix.
311. As to deceased's funeral.
312. Inventory and account.
313. Inventory to include estate in any part of India in certain cases.
314. As to estate of and debts owing to, deceased.
315. Expenses to be paid before all debts.

316. Expenses to be paid next after such expenses.
317. Wages for certain services to be next paid and then other debts.
318. Save as aforesaid, all debts to be paid equally and rateably.
319. Application of movable estate to payment of debts, where domicile not in India.
320. Debts to be paid before legacies.
321. Executor or administrator not bound to pay without indemnity.
322. Abatement of general legacies.
323. Non-abatement of specific legacy, when assets sufficient to pay debts.
324. Rights under demonstrative legacy, when assets sufficient to pay debts and necessary expenses.
325. Rateable abatement of specific legacies.
326. Legacies treated as general for purpose of abatement.
327. Assent necessary to complete legatee's title.
328. Effect of executor's assent to specific legacy.
329. Conditional assent.
330. Assent of executor to his legacy.
331. Effect of executor's assent.
332. Executor when to deliver legacies.
333. Commencement of annuity, when no time fixed by Will.
334. When annuity, to be paid quarterly or monthly, first falls due.
335. Dates of successive payments, when first payment directed to be paid within given period or on days certain .
336. Investment of sums bequeathed, when legacy, not specific, given for life.
337. Investment of general legacy, to be paid at future time and disposal of intermediate interest.
338. Procedure when no fund charged with or appropriated to, annuity.
339. Transfer to residuary legatee of contingent bequest.
340. Investment of residue bequeathed for life, without direction to invest in particular securities.
341. Investment of residue bequeathed for life, with direction to invest in specified securities.
342. Time and manner of conversion and investment.
343. Procedure when minor entitled to immediate payment or possession of bequest and no direction to pay to person on his behalf.
344. Legatee's title to produce specific legacy.
345. Residuary legatee's title to produce of residuary fund.
346. Interest, when no time fixed for payment of general legacy.
347. Interest, when time fixed.
348. Rate of interest.
349. No interest on arrears of annuity within first year, after testator's death.
350. Interest on sum to be invested to produce annuity.

351. Refund of legacy paid under court's orders.
352. No refund, if not paid voluntarily.
353. Refund when legacy has become due on performance of condition within time allowed under Section 137.
354. When each legatee compellable to refund in proportion.
355. Distribution of assets.
356. Creditor may call legatee to refund.
357. When legatee, not satisfied or compelled to refund under section 356 cannot oblige one paid in full in refund.
358. When unsatisfied legatee must first proceed against executor, if solvent.
359. Limit to refunding of one legatee to another.
360. Refunding to be without interest.
361. Residue after usual payments to be paid to residuary legatee.
362. Transfer of assets from India to executor or administrator in country of domicile for distribution.
363. Liability of executor or administrator for devastation.
364. Liability of executor or administrator for neglect to get part of estate.

CHAPTER VI

SUCCESSION CERTIFICATES

365. Court having jurisdiction to grant certificate.
366. Application for certificate.
367. Procedure on application.
368. Contents of certificate.
369. Requisition of security from grantee of certificate.
370. Extension of certificate.
371. Forms of certificate and extended certificate.
372. Amendment of certificate in respect of powers as to securities.
373. Modes of collecting court-fees on certificate.
374. Local extent of certificate.
375. Effect of certificate.
376. Revocation of certificate.
377. Appeal.
378. Effect on certificate of previous certificate, probate or letters of administration.
379. Validation of certain payments made in good faith.
380. Effect of decisions under this Part, and liability of holder of certificate thereunder.
381. Investiture of inferior courts with jurisdiction of District Court for purposes of this Part.
382. Surrender of superseded and invalid certificates.

CHAPTER VII

MISCELLANEOUS

383. Savings.

PART-3**LIVE-IN RELATIONSHIP**

- 384. Submission of statement by partners to a live-in relationship.
- 385. Children of a live-in relationship.
- 386. When live-in relationships not to be registered.
- 387. Procedure for registration of live-in relationship.
- 388. Registration under this Part only for record.
- 389. Empowerment of Registrar under this Part and maintenance of registers.
- 390. Submission of statement of termination of live-in relationship.
- 391. Duties of Registrar.
- 392. Notice for registration of live-in relationship.
- 393. Punishment for non-submission of statement of live-in relationship.
- 394. Punishment for false averment in the statement of live-in relationship.
- 395. Punishment for non-submission of statement of live-in relationship, even after notice under Section 392.
- 396. Punishment for obtaining consent for live-in relationship by force, coercion or fraud.
- 397. Punishment for being in live-in relationship in contravention of sub-section (2) of Section 386.
- 398. Punishment for being in live-in relationship with minor.
- 399. Maintenance.
- 400. Appeal against refusal of registration.
- 401. Power to make rules.

PART-4**MISCELLANEOUS**

- 402. Repeal and Savings.
- 403. Power to make rules.
- 404. Power to remove difficulties.

Schedule-I

Schedule-II

Schedule-III

Schedule-IV

Schedule-V

Schedule-VI

Schedule-VII

MADHYA PRADESH BILL

NO. 12 OF 2026

THE MADHYA PRADESH UNIFORM CIVIL CODE, 2026

A Bill to govern and regulate the laws relating to marriage and divorce, succession, live-in relationship and matters connected therewith and incidental thereto.

Be it enacted by the Madhya Pradesh Legislature in the seventy-seventh year of the Republic of India as follows:-

PRELIMINARY

1. (1) This Act may be called the Madhya Pradesh Uniform Civil Code, 2026.
- (2) It extends to the whole of the State of Madhya Pradesh and applies also to the residents of Madhya Pradesh, who reside outside the territories to which this Code extends.

Short title,
extent and
commencement.

- (3) It shall come into force on such date, as the State Government may, by notification in the Gazette, appoint.
2. Nothing contained in this Code shall apply to,-
 - (1) the members of Scheduled Tribes within the meaning of clause (25) of article 366 read with article 342 of the Constitution of India; and
 - (2) the persons and group of persons, whose customary rights are protected under Part XXI of the Constitution of India.

Non-applicability
of Code to
Scheduled
Tribes and
other group of
persons.

3. (1) In this Code, unless the context otherwise requires,-
 - (a) "child" in relation to parents, married or unmarried, means their biological child, an adopted child or a child born through surrogacy or assisted reproductive technology;
 - (b) "court" means a court of original civil jurisdiction and includes, a family court established under the Family Courts Act, 1984 (No. 66 of 1984) or any court, upon which the powers and jurisdiction of a family court are conferred;
 - (c) "custom and usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among persons in any local area, tribe or community:
Provided that the rule is certain and not unreasonable or against public policy or morality or both;
 - (d) "degrees of prohibited relationship" a man and any of the persons mentioned in list-1 of the Schedule-I and a woman and any of the persons mentioned in list-2 of the said Schedule are within the degrees of prohibited relationship.

Definitions.

Explanation 1.- Relationship includes,-

- (i) relationship by half or uterine blood, as well as by full blood, adoption, surrogacy or assisted reproductive technology;
- (ii) blood relationship established by procreation through marriage or without marriage;

and all terms of relationship in this Code shall be construed accordingly.

Explanation 2.- “full blood” two persons are said to be related to each other by full blood, when they are descended from a common ancestor by the same wife.

Explanation 3.- “half blood” two persons are said to be related to each other by half blood, when they are descended from a common ancestor but by different wives.

Explanation 4.- “uterine blood” two persons are said to be related to each other by uterine blood, when they are descended from a common ancestress but by different husbands.

Explanation 5.- in explanations 2, 3 and 4, “ancestor” includes the father and “ancestress” includes, the mother;

- (e) “estate” means property of any kind, whether movable or immovable, self-acquired or ancestral/coparcenary/joint, tangible or intangible and includes, a share, interest or right in such property;
- (f) “High Court” means the High Court of Madhya Pradesh;
- (g) “minor” means a person, who has not attained the age of eighteen years;
- (h) “notification” means a notification published in the official Gazette of Government of Madhya Pradesh and the expression “notified” shall be construed accordingly;
- (i) “parent” means father or mother of a child;
- (j) “person” means an individual, whether female or male and the words importing the masculine gender shall be taken to include, females, unless the context otherwise provides;
- (k) “prescribed” means prescribed by rules made under this Code;
- (l) “Registrar” means the Registrar appointed by the State Government under this Code;
- (m) “Registrar General” means the Registrar General appointed by the State Government under this Code;
- (n) “resident”, for the purpose of this Code, means a citizen of India, whether residing within or outside the territories of the State of Madhya Pradesh, who,—
 - (i) is eligible to be a resident under the notification issued by the State Government in this regard; or
 - (ii) is a permanent employee of the State Government or its undertakings/entities; or
 - (iii) is a permanent employee of the Central Government or its undertakings/entities, employed within the territory of the State; or
 - (iv) is a beneficiary of any scheme of the State Government or the Central Government, applicable in the State and notified by the State Government for this purpose; or

- (v) was born in Madhya Pradesh and has parents, who are residents of Madhya Pradesh or owns immovable property within the State of Madhya Pradesh:

Provided that such person does not have domicile in any other State; or

- (vi) has been continuously residing in the State for the last ten years.
 - (o) "spouse" means either husband or wife in a marriage;
 - (p) "State" means the State of Madhya Pradesh; and
 - (q) "State Government" means the Government of Madhya Pradesh.
- (2) In Part-1 of this Code, unless the context otherwise requires,-
- (a) "maintenance" includes provision for food, clothing, residence, education, medical attendance and treatment and special needs, if any; and
 - (b) "parties to the marriage" means a man and a woman, between whom marriage has been solemnized/contracted.
- (3) In Part- 2 of this Code, unless the context otherwise requires,
- (a) "administrator" means a person appointed by the competent authority to administer the estate of a deceased person, when there is no executor;
 - (b) "bequest" means the act of assigning specific estates of a person to others, after the death of that person and its grammatical variations and cognate expressions shall be construed accordingly;
 - (c) "caveat" means the notice for allowing the applicant to be heard by a court before granting a probate or administration;
 - (d) "codicil" means an instrument made in relation to a Will and explaining, altering or adding to its dispositions and shall be deemed to form part of the Will;
 - (e) "District Judge" means the Judge of a principal civil court of original jurisdiction in a district;
 - (f) "executor" means a person, to whom the execution of the last Will of a deceased person is by the testator's appointment, confided;
 - (g) "heir" means any person, who is entitled to succeed to the estate of an intestate;
 - (h) "intestate" a person is said to die intestate in respect of estate belonging to such person, for which no testamentary disposition capable of taking effect has been made;
 - (i) "legacy" signifies the estate, which may pass on from one person to other/ others, in accordance with the provisions contained in Chapter II of Part-2 of this Code;
 - (j) "probate" means the copy of a Will certified under the seal of a court of competent jurisdiction with a grant of administration to the estate of the testator;
 - (k) "testator" means the person, who executes a Will; and

- (l) “Will” means the legal declaration of the intention of a testator with respect to his estate, which he desires to be carried into effect after his death.

Explanation.- Words and expressions used in Part-2 and not defined in this sub-section, but defined in the Indian Succession Act, 1925 (No. 39 of 1925), shall have, in Part-2, the same meanings as assigned to them in the said Act.

- (4) In Part-3 of this Code, unless the context otherwise requires,—

- (a) “live-in relationship” means a relationship between a man and a woman (hereinafter referred to as “partners”), who cohabit in a shared household through a relationship in the nature of marriage:

Provided that such relationship is not prohibited under Part-3 of the Code;

- (b) “shared household” means a household, where a man and a woman, not being minors, live under one roof in a rented accommodation or in a house owned jointly or by any one of them;
- (c) “statement of live-in relationship” means a jointly signed statement to the effect that a man and a woman are in a live-in relationship or intend to enter into such a relationship and submitted to the Registrar in the manner prescribed for registration of such a relationship; and
- (d) “statement of termination” means a signed statement by any or both partners to an existing live-in relationship, that such relationship has been terminated and submitted to the Registrar in the prescribed manner.

PART-1

MARRIAGE AND DIVORCE

CHAPTER I

CONDITIONS FOR SOLEMNIZING/CONTRACTING MARRIAGE

Conditions
for a valid
marriage.

4. A marriage may be solemnized/contracted between a man and a woman if the following conditions are fulfilled, namely:—
- (1) neither party has a spouse living at the time of the marriage;
 - (2) at the time of the marriage, neither party,—
 - (a) is incapable of giving valid consent in consequence of unsoundness of mind; or
 - (b) though capable of giving valid consent, has been suffering from a mental disorder of such a kind or to such an extent, as to be unfit for marriage; or
 - (c) has been subject to recurrent attacks of insanity;
 - (3) the man has completed the age of twenty-one years and the woman the age of eighteen years;
 - (4) the parties are not within the degrees of prohibited relationship, unless the custom and usage governing at least one of them permits marriage between the two;
 - (5) the marriage is not prohibited under any law in force.

5. A marriage may be solemnized/contracted between a man and a woman in accordance with their customary practices, religious beliefs, ceremonies, rites and rituals, including but not limited to “*Saptapadi*”, “*Ashirvad*”, “*Nikah*”, “*Holy Union*”, “*Anand Karaj*” “*Arya Samaji Vedic Vidhi*”, “*Nissuin*” and “*Mangal Fera*”.

Ceremonies
for marriage.

CHAPTER II

REGISTRATION OF MARRIAGE AND DIVORCE

6. Notwithstanding anything contained in any other law for the time being in force or in any custom and usage to the contrary, a marriage solemnized/contracted in the State or outside the territory thereof, after the commencement of this Code, where at least one party to the marriage is a resident of the State, shall be registered in accordance with the procedure as mentioned in sub-section (1) of section 10:

Compulsory
registration of
marriage
solemnized/
contracted
after the
commencement
of Code.

Provided that the conditions under section 4 and requirements of section 5 are fulfilled.

7. (1) Unless, already registered under the Madhya Pradesh Compulsory Registration of Marriages Rules, 2008, marriage solemnized/contracted in the State, between 23.01.2008 and the date of commencement of this Code, where at least one party to the marriage was a resident of the State at the time of the marriage, shall be registered in accordance with the procedure mentioned in sub-section (2) of section 10:

Registration of
marriage
solemnized/
contracted
before the
commencement
of the Code.

Provided that any marriage registered under the Madhya Pradesh Compulsory Registration of Marriages Rules, 2008 shall deemed to be registered under this Code.

(2) Any marriage solemnized/contracted in the State before 23.01.2008 or outside the State before commencement of this code, where at least one party to the marriage was/is a resident of the State, at the time of marriage/registration, may be registered in accordance with the procedure mentioned in sub-section (3) of section 10:

Provided that a marriage may be registered under this section, only if the following conditions are fulfilled,-

- a ceremony of marriage has been performed between the parties and they have been living together as spouses ever since;
- neither party has, at the time of registration, more than one spouse living, unless otherwise permitted under any statute or custom and usage of any of the parties, at the time of marriage;
- at the time of registration, the male has completed the age of twenty-one years and the female the age of eighteen years;
- the parties are not within the degrees of prohibited relationship:

Provided that the prohibitions will not apply to person(s), who were permitted to marry under his/their custom and usage or under any law.

8. (1) Any decree of divorce or nullity of marriage passed by any court in the State, which has attained finality, after the commencement of this Code, shall be registered in accordance with the procedure as mentioned in clause (a) of sub-section (1) of section 11.

Registration of
decree of
divorce or
nullity, which
has attained
finality after
commencement
of Code.

Registration of decree of divorce or nullity, which has attained finality, before the commencement of Code.

Period and procedure for registration of marriage under section 6 and 7.

(2) Any decree of divorce or nullity of marriage passed by any court outside the State, which has attained finality, after the commencement of this Code, where at least one party to the decree is a resident of the State, shall be registered in accordance with the procedure, as mentioned in clause (b) of sub-section (1) of section 11.

9. (1) Any decree of divorce or nullity of marriage passed by any court in the State, which has attained finality before the commencement of this Code, may be registered in accordance with the procedure, as mentioned in clause (a) of sub-section (2) of section 11.

(2) Any decree of divorce or nullity of marriage passed by any court outside the State, which has attained finality before the commencement of this Code, where at least one party to the decree is a resident of the State, may be registered in accordance with the procedure, as mentioned in clause (b) of sub-section (2) of section 11.

10. (1) In case of a marriage solemnized/contracted, after the commencement of this Code, which is required to be registered under section 6, the parties to the marriage shall submit a memorandum in the prescribed manner, within a period of sixty days from the date of marriage,-

(a) in case of a marriage solemnized/contracted in the State, to the Registrar within whose jurisdiction,-

- (i) the marriage was solemnized/contracted; or
- (ii) both or either of the parties to the marriage reside (s); and

(b) in case of a marriage solemnized/contracted outside the State, to the Registrar, who has jurisdiction over the place, to which both or either of the parties belong(s).

(2) In case of a marriage solemnized/contracted in the State between 23.01.2008 and the date of commencement of this Code, which is required to be registered under sub-section (1) of section 7, the parties to the marriage shall submit a memorandum in the prescribed manner, within a period of one year from the date of commencement of this Code, to the Registrar within whose jurisdiction,-

- (i) the marriage was solemnized/contracted; or
- (ii) both or either of the parties to the marriage reside (s).

(3) In case of a marriage solemnized/contracted in the State before 23.01.2008 or outside the State before the commencement of this Code, which may be registered under sub-section (2) of section 7, the parties to the marriage seeking registration may submit a memorandum in the prescribed manner, within a period of one year from the date of commencement of this Code,-

(a) in case of a marriage solemnized/contracted in the State, to the Registrar within whose jurisdiction,-

- (i) the marriage was solemnized/contracted; or
- (ii) both or either of the parties to the marriage reside(s); and

(b) in case of a marriage solemnized/contracted outside the State, to the Registrar, within whose jurisdiction both or either of the parties belong(s):

Provided that the Registrar may entertain a memorandum presented beyond the period prescribed under this sub-section, on being satisfied that there are sufficient grounds for the same.

- 11. (1)** In case of any decree of divorce or nullity of marriage required to be registered under section 8, both or either of the parties to the decree shall submit a memorandum in the prescribed manner, within a period of sixty days from the date, on which the decree has attained finality,-

Period and procedure for registration of decree of divorce or nullity under section 8 and 9.

- (a) in case of a marriage solemnized/contracted in the State, to the Registrar, within whose jurisdiction,-
 - (i) the marriage was solemnized/contracted; or
 - (ii) both or either of the parties to the marriage reside(s); and
- (b) in case of a marriage solemnized/contracted outside the State, to the Registrar, who has jurisdiction over the place, to which both or either of the parties belong(s).

- (2)** In case of any decree of divorce or nullity of marriage that may be registered under section 9, both or either of the parties to the decree seeking registration may submit a memorandum in the prescribed manner, within a period of one year from the date of commencement of this Code,-

- (a) in case of a decree of divorce or nullity of marriage passed by any court in the State, to the Registrar, within whose jurisdiction,-
 - (i) the marriage was solemnized/contracted; or
 - (ii) both or either of the parties to the marriage reside(s); and
- (b) in case of a decree of divorce or nullity of marriage passed by any court outside the State, to the Registrar, who has jurisdiction over the place, to which both or either of the parties belong(s):

Provided that the Registrar may entertain a memorandum presented beyond the period prescribed under sub-section (2), on being satisfied that there are sufficient grounds for the same.

- 12.** The State Government shall, by notification in the official Gazette, appoint such person, as it considers appropriate, to be the Registrar General for the State and shall also, by notification, appoint Registrar(s) for any area(s), as it considers appropriate.

Appointment of Registrar General and Registrar.

- 13. (1)** Every memorandum presented under section 10 or section 11 shall be accompanied with a prescribed fee.

Action on receipt of memorandum under section 10 or section 11.

- (2)** Within fifteen days of the receipt of a memorandum of marriage or divorce or nullity of marriage in the prescribed manner, as the case may be, the Registrar shall either,-

- (a) enter the particulars in the register of marriage and divorce or nullity of marriage and issue, in the case of registration of marriage, a certificate of marriage and in case of registration of decree of divorce or nullity of marriage, an acknowledgement thereof, in such form and manner, as may be prescribed. While issuing the certificate of marriage or acknowledgement

of divorce or nullity of marriage, as the case may be, the Registrar shall satisfy himself that the marriage has been duly solemnized/contracted, in accordance with the provisions of this Part or that the decree of divorce or nullity of marriage has been passed by a court; or

- (b) reject the memorandum of marriage or of divorce or nullity of marriage, after providing an opportunity of hearing to the parties, in the manner prescribed and pass an order by recording the reasons in writing.

(3) If the Registrar fails to act under sub-section (2), the aggrieved person shall be entitled to file a complaint regarding the inaction of the Registrar, to the Registrar General.

Cancellation of registration and appeal against registration.

14. (1) Power to cancel registration— The power to cancel any registration relating to marriage or divorce, shall be vested with the Registrar General, appointed under section 12 or with any other officer designated by the Registrar General in this behalf. Before cancelling such registration, the applicant shall be given an opportunity of being heard by the Registrar General or the designated officer.

(2) Appeal against rejection of registration—

- (a) Where the Registrar rejects a memorandum presented under section 10 or section 11, both or either party to the marriage or decree of divorce or nullity of marriage, as the case may be, may within a period of thirty days from the date of receipt of such rejection order, prefer an appeal to the Registrar General or to an official designated by the State Government to decide such appeals, whose decision thereon shall be final:

Provided that the Registrar General or the designated official may entertain an appeal presented beyond the period prescribed under sub-section (2), on being satisfied that there are sufficient grounds for the same.

- (b) an appeal under clause (a) shall be accompanied with a duly certified copy of the rejection order and shall be in such form and manner, as may be prescribed;
- (c) while deciding the appeal, the Registrar General or the designated official, to whom the appeal under clause (a) has been preferred shall, after having regard to the circumstances and upon recording the reasons in writing, either direct the Registrar to enter the particulars in the register of marriage and divorce or nullity of marriage and issue certificate of marriage or acknowledgement of divorce or nullity of marriage or confirm the order of the Registrar:

Provided that no order confirming the order of the Registrar shall be passed without providing the parties an opportunity of being heard;

- (d) an appeal under sub-section (2) shall, as far as possible, be decided within a period of sixty days, from the date of its filing.

Inspection of Registers.

15. The registers of marriage and divorce, appeals and such other registers, as may be prescribed, which are maintained under this Part shall, at all reasonable times, be open for inspection and certified extracts therefrom shall, on application, be issued by such officer, as may be authorized by the Registrar or the Registrar General, as the case may be, on payment of the prescribed fee and in the prescribed manner.

- 16. (1)** Any extract issued under section 15 shall be signed by such officer, as may be authorised by the Registrar concerned or the Registrar General, as the case may be and shall be admissible as evidence in Court of law or any other authority, for the purpose of establishing the fact of marriage or divorce or nullity of marriage, to which such extract relates.
- (2)** Certificate of marriage or any extract of the register, issued under sub-section (1) shall be presumed to be correct, unless the contrary is proved.
- 17. (1)** Any person, who wilfully omits or neglects to present the memorandum, in a case where it is compulsory to do so under section 10 or 11, shall be liable to pay such penalty, not exceeding ten thousand rupees, as may be imposed by the Registrar.
- (2)** Any person, who makes any statement in the memorandum, which is false and which he knows or has reason to believe to be false or presents a forged or fabricated document, shall be punished, as per the provisions of the Bharatiya Nyaya Sanhita, 2023 (No. 45 of 2023).
- 18. (1)** Where it is compulsory to present the memorandum under section 10 or 11 and the parties to a marriage or to a decree of divorce or nullity of marriage, as the case may be, have failed to do so, the Registrar, either *suo motu* or on receipt of a complaint or information in this regard, shall by notice, require such parties to present a memorandum, within thirty days from the date of receipt of the notice. The Registrar shall, after presentation of the memorandum, register the marriage or the decree of divorce or nullity of marriage, as the case may be, on payment of,-
- (a) penalty, as prescribed under sub-section (1) of section 17; and
- (b) late fee, as may be prescribed.
- (2)** upon the failure of parties to approach the Registrar for registration of marriage, divorce or nullity of marriage, as the case may be, on being required by a notice to do so under sub-section (1), such persons shall be liable to pay a penalty not exceeding twenty-five thousand rupees.
- 19. (1)** Where, a Registrar has wilfully failed to act in accordance with sub-section (2) of section 13, the Registrar General may issue a show-cause notice to the Registrar. The Registrar General, upon examining the presentation made by the Registrar, finds that the Registrar has wilfully failed to act, he may impose a penalty, not exceeding twenty-five thousand rupees on the Registrar.
- (2)** Where a penalty has been imposed on a Registrar under sub-section (1), he may prefer an appeal, within thirty days before the competent appellate authority, as notified by the State Government.
- (3)** An appeal under sub-section (2) shall be presented along with certified copy of the order of penalty in the prescribed manner.
- (4)** The appellate authority may, confirm, modify or annul such order, in the manner, as it deems necessary.
- 20.** No marriage shall be deemed to be invalid solely by reason of the fact that it was not registered under this Part or that the memorandum was not presented to the Registrar or certificate of marriage was not issued by the Registrar or the particulars in such memorandum or certificate of marriage were defective, irregular or incorrect.

Evidentiary value of certain documents.

Penalty for neglect and punishment for false statement.

Procedure in case of non-registration.

Penalty for inaction by Registrar and appeal against penalty.

Non-registration not to invalidate marriage.

Responsibility of employer etc. regarding verification of marriage registration certificate.	21. No employer or a Government or Semi-Government Authority or Company or Public Sector Undertaking or Local Authority shall carry out any change in their office record regarding marital status of its employees or of any person dealing with them, unless the person applying for carrying out such a change, submits a certified copy of the registration certificate of marriage issued under this Code.
Punishment for concealing, destroying or altering register.	22. Any person, who conceals, destroys or dishonestly or fraudulently alters any register maintained under this Code or any part thereof shall be punished with imprisonment for a term, which may extend to two years or with a fine, which may extend to ten thousand rupees or with both.
Registrar to be public servant.	23. Every Registrar acting in pursuance of the provisions of this Code or rules made thereunder, shall be deemed to be a public servant, within the meaning of sub-section (28) of section 2 of the Bharatiya Nyaya Sanhita, 2023 (No. 45 of 2023).
Indemnity to persons acting under the Code.	24. No suit, prosecution or other legal proceedings shall lie against the Registrar General, the Registrar or any employee sub-ordinate to them, for anything which is done in good faith under this Code or rules made thereunder.
Power of State Government to give directions.	25. The State Government may, from time to time, issue such directions, not inconsistent with the provisions of this Code, to the Registrar and to the Registrar General, as it may think fit in this regard, for the effective and smooth implementation of the provisions of this Code and Registrar and the Registrar General shall comply with such directions.

CHAPTER III

RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION

Restitution of conjugal rights.	26. When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the Court for restitution of conjugal rights and the Court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground for rejection, may decree restitution of conjugal rights accordingly. <i>Explanation.-</i> Where a question arises, whether there has been reasonable excuse for withdrawal from the society of the other, the burden of proving such reasonable excuse shall be on the person, who has withdrawn from the society.
Judicial separation.	27. (1) Either party to a marriage, whether solemnized/contracted before or after the commencement of this Code, may present a petition to the Court praying for a decree for judicial separation, on any of the grounds specified in sub-section (1) of section 31 and in case of a wife, also on any of the grounds specified in sub-section (3) thereof, as grounds, on which a petition for divorce might have been presented. (2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the Court may, on a petition by either party and on being satisfied of the truth of the statement made in such petition, rescind the decree, if it considers it just and reasonable to do so.

CHAPTER IV

NULLITY OF MARRIAGE AND DIVORCE

- 28.** Any marriage solemnized/contracted after the commencement of this Code, shall be null and void and may, on a petition presented by either party thereto, against the other party, be so declared by a decree of nullity, if it contravenes any one of the conditions specified in sub-section (1), (2), (4) and (5) of section 4. **Void marriages.**
- 29.** Any marriage solemnized/contracted, whether before or after the commencement of this Code, shall be voidable and may be annulled by a decree of nullity, on a petition presented to the court, on any of the following grounds, namely:— **Voidable marriages.**
- (a) that the marriage has not been consummated owing to the impotence or wilful refusal of the respondent; or
 - (b) that the marriage is in contravention of the conditions specified in sub-section (3) of section 4; or
 - (c) that the consent of the petitioner was obtained by force, coercion or fraud; or
 - (d) that the wife was, at the time of the marriage, pregnant by a man other than the husband or that the husband had, at the time of the marriage, impregnated a woman other than the wife; or
 - (e) that at the time of the marriage one of the parties to the marriage had misrepresented his identity.
- 30.** Notwithstanding anything contained in section 29, no petition for annulling a marriage shall be entertained, by the court on the ground specified in,— **Limitation on filing a petition for decree of divorce or nullity of marriage.**
- (a) clause (b) of section 29, if the proceedings have been instituted after the expiry of one year from the date of attaining the age of twenty-one years by the petitioner;
 - (b) sub-section (c) of section 29, if, —
 - (i) the petition is presented more than one year, after the force or coercion had ceased to operate or as the case may be, the fraud had been discovered; or
 - (ii) the petitioner has, with his free consent, lived with the other party to the marriage as spouse, after the force or coercion had ceased to operate or as the case may be, the fraud had been discovered;
 - (c) sub-section (d) of section 29, unless the court is satisfied that,—
 - (i) the petitioner, at the time of the marriage, was ignorant of the facts alleged;
 - (ii) the proceedings have been instituted, in the case of a marriage solemnized/contracted before the commencement of this Code, within one year of such commencement and in the case of a marriage solemnized/contracted after such commencement, within one year from the date of the marriage; and
 - (iii) marital intercourse with the consent of the petitioner has not taken place, since the discovery by the petitioner of the existence of the said ground.

Divorce.

31. (1) Any marriage solemnized/contracted, whether before or after the commencement of this Code, may, on a petition presented to the Court by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has,—

- (a) after the solemnization/contracting of the marriage, had voluntary sexual intercourse with any person other than the petitioner; or
- (b) after the solemnization/contracting of the marriage, treated the petitioner with cruelty; or
- (c) deserted the petitioner, for a continuous period of not less than two years, immediately preceding the presentation of the petition;

Explanation.— In this clause, the expression “desertion” means the desertion of the petitioner by the other party to the marriage, without reasonable cause and without the consent or against the wish of such party and includes the wilful neglect of the petitioner by the other party to the marriage and its grammatical variations and cognate expressions shall be construed accordingly; or

- (d) converted to a religion other than the one, to which the petitioner belonged; or
- (e) been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent, that the petitioner cannot reasonably be expected to live with the respondent;

Explanation - In this clause,—

- (i) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;
- (ii) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence), which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party and whether or not it requires or is susceptible to medical treatment; or
- (f) been suffering from incurable venereal disease in a communicable form; or
- (g) renounced the world by entering any religious order or otherwise; or
- (h) not been heard of as being alive, for a period of seven years or more, by those persons, who would naturally have heard of it, had that party been alive; or
- (i) solemnized/contracted another marriage, in contravention of sub-section (1) of section 4; or
- (j) failed to comply with an order of maintenance passed in favour of the petitioner and against the respondent by a competent Court, under any law in force, for a period of not less than one year, immediately preceding the presentation of the petition.

(2) Either party to a marriage, whether solemnized/contracted, before or after the commencement of this Code, may also present a petition to the Court for dissolution of marriage by a decree of divorce on the ground that,—

- (a) there has been no resumption of cohabitation between the parties to the marriage for a period of one year or upwards, after the passing of a decree for judicial separation in a proceeding, to which they were parties; or

- (b) there has been no restitution of conjugal rights between the parties to the marriage, for a period of one year or upwards, after passing of a decree for restitution of conjugal rights in a proceeding, to which they were parties.
- (3) A wife may also present a petition to the Court, for the dissolution of marriage by a decree of divorce on the ground that,—
- (a) the husband has, since the solemnization/contracting of the marriage, been guilty of rape; or
- (b) the husband had more than one wife from marriages solemnized/contracted before the commencement of this Code.
- 32.** In any proceeding under this Part of the Code, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on any of the grounds mentioned in clauses (f), (g) and (h) of sub-section (1) or sub-section (2) or (3) of section 31, the Court may, if it considers it just to do so, having regard to the circumstances of the case, pass instead a decree for judicial separation.
- 33.** (1) Subject to the provisions of this Part, a petition for dissolution of marriage by a decree of divorce, may be presented to the Court by both the parties to a marriage together, whether such marriage was solemnized/contracted before or after the commencement of this Code, on the ground, that they have been living separately for a period of one year or more, that they are not able to live together and that they have mutually agreed that the marriage should be dissolved.
- (2) On the motion of both the parties, made not earlier than six months, after the date of presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the Court shall, on being satisfied, after hearing the parties and after making such inquiry, as it thinks fit, that a marriage has been solemnized/contracted and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved, with effect from the date of the decree.
- (3) Where the court is of the opinion that due to the case being one of exceptional hardship suffered by any of the parties to the marriage or of exceptional depravity on the part of any such party, there is no possibility of reconciliation between the parties, it may waive off the requirement of one year of separation for filing petition under sub-section (1), as well as the time limit of six months for filing of motion under sub-section (2) and proceed with passing of a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.
- 34.** (1) No petition for divorce shall be presented to the court, unless on the date of presentation of the petition, one year has elapsed since the date of marriage:
- Provided that the Court may, upon application made to it, allow a petition to be presented before the expiry of one year, on the ground, that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent.
- (2) Where the court has allowed the petition to be presented before the expiry of one year and it is discovered that such permission has been obtained by any misrepresentation or concealment of facts, the court may reject the petition, without prejudice to the right of the petitioner to present a petition, after the expiry of one year upon the same or substantially same facts and grounds.

Alternate relief in divorce proceedings.

Divorce by mutual consent.

Restriction on petition for divorce, within one year of marriage.

- (3) In allowing any petition for divorce, to be presented within one year of marriage under proviso to sub-section (1), the court shall have regard to the best interest and welfare of children of the marriage, if any and matters related thereto.

Prohibition on dissolution of marriage.

35. No marriage solemnized/contracted before or after the commencement of this Code, shall be dissolved in any manner, except in accordance with the provisions of this Part of the Code, notwithstanding any usage, custom, tradition, personal law of any party to the marriage or any enactment to the contrary.

Right of person to remarry, where a decree of divorce or nullity of marriage is passed.

36. (1) When a decree of divorce or nullity of marriage has been passed and has attained finality, it shall be lawful for either party to the decree to marry again.
(2) Right to remarry under sub-section (1) includes the right to remarry the divorced spouse without any condition, such as marrying a third person before such remarriage.

Legitimacy of children of divorce and voidable marriages.

37. Notwithstanding the fact that a marriage has been declared null and void, any child of such marriage shall be deemed to be legitimate.

Punishment for contravention of certain provisions.

38. (1) Any person who,—
- having a husband or wife living, marries another person after the commencement of the Code in contravention of sub-section (1) of section 4, shall be punished under the Bharatiya Nyaya Sanhita, 2023 (No. 45 of 2023);
 - solemnizes/contracts a marriage in contravention of sub-section (3) of section 4, shall be punished under the Prohibition of Child Marriage Act, 2006 (No. 6 of 2007);
 - procures a marriage in contravention of sub-section (4) of section 4, shall be punished with simple imprisonment, for a term, which may extend to six months and with fine, not exceeding rupees fifty thousand or with both;
 - dissolves a marriage in contravention of section 35 shall be punished with imprisonment for a term, which may extend to three years and shall also be liable to fine;
 - compels, abets or induces a person, to observe any condition in violation of sub-section (2) of section 36, before remarriage, shall be punished with imprisonment for a term, which may extend to three years and shall also be liable to fine of rupees one lakh;
 - obtains the consent of a person for marriage by force, coercion or fraud, shall be punished with imprisonment for a term, which may extend to seven years and shall also be liable to fine.
- (2) Notwithstanding anything contained in the Bharatiya Nagarik Suraksha Sanhita, 2023 (No. 46 of 2023), -
- an offence punishable under clause (b) or clause (c) of sub-section (1) shall be cognizable;
 - an offence punishable under clause (b) and clause (c) of sub-section (1) shall be compoundable, at the instance of the aggrieved person with the permission of the Judicial Magistrate of competent jurisdiction, on such terms and conditions, as such Judicial Magistrate may impose.

CHAPTER V

INCIDENTAL PROCEEDINGS

39. Where in any proceeding under this Part, it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her/his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the applicant, during the pendency of the proceeding, the expenses of the proceeding and such monthly sum as, having regard to the applicant's own income and the income of the respondent, may seem to the court to be just and reasonable:

**Maintenance
pendent lite and
expenses of
proceedings.**

Provided that where a man is married to more than one wife prior to the commencement of this Code, then each of the wives shall be entitled for maintenance:

Provided further that the application for the payment of the expenses of the proceeding and such monthly sum, during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.

40. (1) Any court exercising jurisdiction under this Part may, at the time of passing any decree or at any time subsequent thereto, on application made by any of the parties to the decree, order that the other party shall pay to the applicant, for her/his maintenance and support, such gross sum or such monthly or periodical sum, for a term, not exceeding the life of the applicant as, having regard to the respondent's income and estate, the income and estate of the applicant, any mutual agreement/settlement between the parties, if any, the conduct of the parties and other circumstances of the case, may seem to the court to be just and such payment may be secured, if necessary, by a charge on the immovable property of the other party:

**Permanent
alimony and
maintenance.**

Provided that *mahr*, dower, *streedhan* or any other property presented to the wife, shall be in addition to her claim for maintenance.

- (2) If the court is satisfied that there is a change in the circumstances of either party, at any time, after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner, as the court may deem just.

41. (1) In any proceeding under this Part, the court may, from time to time, pass such interim orders and make such provisions in the decree, as it may deem just and proper, with respect to the custody, care, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application for the purpose, make from time to time, all such orders and provisions with respect to the custody, care, maintenance and education of such children, as might have been made by such decree or interim orders, in case the proceeding for obtaining such decree were still pending and the court may also, from time to time revoke, suspend or vary any such orders and provisions previously made:

**Custody and
care of
children.**

Provided that the application with respect to the custody, care, maintenance and education of such children shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.

- (2) In arriving at a decision under sub-section (1), the paramount consideration of the court shall be the best interest and welfare of the child:

Provided that the custody of a minor child, who has not completed the age of five years shall ordinarily be with the mother.

Disposal of estate.

42. (1) In any proceeding under this Part, the court may, for the benefit of the wife or the husband or their children, make such provisions in the decree, as it deems just and proper, with respect to any estate, which may belong, either individually or jointly to the parties, whose marriage is the subject of the decree.

(2) In making any such provisions in the decree under sub-section (1), the court shall have regard to the existence of any mutual agreement/settlement between the parties to the marriage and may vary or modify any such agreement/settlement so made, for the benefit of the wife or the husband or their children, as may be deemed just and proper.

CHAPTER VI

JURISDICTION AND PROCEDURE

Courts, to which petition shall be presented.

43. Every petition under this Part, shall be presented to the court, within the local limits of whose jurisdiction,—

- (a) the marriage was solemnized/contracted; or
- (b) the respondent, at the time of the presentation of the petition, resides; or
- (c) the parties to the marriage last resided together; or
- (d) in case the wife is the petitioner, where she is residing on the date of presentation of the petition; or
- (e) the petitioner, is residing at the time of the presentation of the petition, in a case, where the respondent is, at that time residing outside the territories, to which this Code extends or has not been heard of as being alive, for a period of seven years or more by those persons, who would naturally have heard of it, had the respondent been alive.

Pleadings under this Part.

44. (1) Every pleading filed under this Part, shall state as distinctly as the nature of the case permits, the facts, on which the claim to relief and the objection thereto are founded and except in a petition under section 28, shall also state that there is no collusion between the petitioner and the other party to the marriage.

(2) The statements contained in every pleading filed under this Part, shall be verified by the petitioner or the respondent, as the case may be or by some other competent person, in the manner prescribed for the verification of pleadings under the Code of Civil Procedure, 1908 (No. 5 of 1908).

Procedure for proceedings in the court under this Part.

45. Subject to the other provisions contained in this Part, all proceedings in the court under this Part, shall be regulated as per the procedure prescribed under the Family Courts Act, 1984 (No. 66 of 1984) or Code of Civil Procedure, 1908 (No. 5 of 1908), as the case may be and the rules made thereunder.

Power to transfer petitions in certain cases.

46. (1) Where,—

- (a) a petition under this Part has been presented to the Court having jurisdiction by a party to a marriage, praying for a decree for restitution of conjugal rights, nullity of marriage, judicial separation or divorce under this Part; and

- (b) another petition under this Part has been presented thereafter by the other party to the marriage, praying for a decree for any of the reliefs contemplated under clause (a) on any ground, whether in the same court or in a different court,

the petitions shall be dealt with, as specified in sub-section (2).

(2) In a case where sub-section (1) applies, –

- (a) if the petitions are presented to the same Court, both the petitions shall be tried and heard together by that Court;
- (b) if the petitions are presented to different courts, the petition presented later shall be transferred to the court, in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the court, in which the earlier petition was presented.

(3) Notwithstanding anything contained in clause (b) of sub-section (2), the High Court may, on an application by any of the parties or on its own motion, assign and transfer all the petitions to one of the courts hearing the petitions or any other court, as may be considered just and proper.

47. (1) The hearing of a petition under this Part shall, as far as practicable, be continued from day-to-day, unless otherwise directed for reasons to be recorded.

Special provisions relating to trial and disposal of petitions under this Part.

(2) Every petition under this Part shall be heard, as expeditiously as possible and endeavour shall be made to conclude the hearing within six months, from the date of service of notice of the petition on the respondent.

(3) Every appeal under this Part, shall be heard, as expeditiously as possible and endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent.

48. Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence, in any proceeding, at the hearing of a petition under this Part, on the ground, that it is not duly stamped or registered.

Documentary evidence.

49. (1) Whether any mediation agreement between the spouses exists or not, the parties, before filing any suit or proceedings under Part-1 of this Code, may try to settle the disputes through the prescribed pre-litigation mediation process.

Decree in proceedings.

(2) In any proceeding under this Part, whether defended or not, if the court is satisfied that,-

- (a) any of the grounds for granting relief exists and the petitioner, except in cases, where the relief is sought by her/him on the ground specified in clause (a), (b) or (c) of sub-section (2) of section 4, is not in any way taking advantage of her/his own wrong or disability, for the purpose of such relief; and
- (b) where the ground of the petition, is the ground specified in clause (a) of sub-section (1) of section 31, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of or where the ground of the petition is as specified in clause (b) of sub-section (1) of section 31, the petitioner has not willingly condoned the cruelty;

- (c) when a divorce is sought on the ground of mutual consent under section 33, such consent has not been obtained by force, fraud or undue influence;

the court shall decree such relief accordingly.

- (3) Before proceeding to grant any relief under this Part, it shall be the duty of the court in the first instance, in every case, where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties:

Provided that nothing contained in this sub-section shall apply to any proceeding, wherein relief is sought on any of the grounds specified in clauses (e), (f), (g) and (h) of sub-section (1) of section 31.

- (4) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period, not exceeding thirty days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court, if the parties fail to name any person. On successful reconciliation, a report to that effect shall be filed with the court, for appropriate orders. However, when reconciliation fails, no record of the reconciliation proceedings shall be maintained and only the fact of failure of reconciliation shall be filed with the court.

**Relief to
respondent in
divorce and
other
proceedings.**

50. In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may, not only oppose the relief but also seek relief on any of the grounds permissible under this Part and if proved, the court may grant such relief to the respondent under this Part, to which she/he would have been entitled, if she/he had presented a petition seeking such relief on that ground.

**Power to
punish and
procedure
therefor.**

51. Any Judicial Magistrate First Class, within whose jurisdiction any offence under this Part is committed, on a complaint made to it, may try and punish, in accordance with the provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023 (No. 46 of 2023).

CHAPTER VII

SUPPLEMENTAL PROVISIONS

**Appeals from
decrees and
orders.**

52. (1) All decrees, except consent decrees, made by the court in proceedings under this Part shall, subject to the provisions of sub-section (3), be appealable to the High Court.
- (2) Orders made by the court under section 40, 41 or 42 shall, subject to the provisions of sub-section (3), be appealable, if they are not interim orders and every such appeal shall lie to the High Court.
- (3) There shall be no appeal under this section on the subject of costs only.
- (4) Every appeal under this section shall be preferred, within a period of ninety days, from the date of the decree or order:

Provided that if the court is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of ninety days, it may entertain the appeal within a further period not exceeding sixty days.

- | | |
|--|------------------------------------|
| 53. All decrees and orders made by the court, in any proceeding under this Part, shall be enforced in the manner, as the decrees and orders under the Code of Civil Procedure, 1908 (No. 5 of 1908). | Enforcement of decrees and orders. |
| 54. The State Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Part. | Power to make rules. |

PART – 2

SUCCESSION

CHAPTER I

INTESTATE SUCCESSION

Order of Preference and Distribution of Shares

- | | |
|--|------------------------------|
| 55. The estate of a person dying intestate, shall devolve, according to the provisions of this Chapter, in the following order of preference,— | General rules of succession. |
|--|------------------------------|
- (a) firstly, upon the heirs, being the relatives specified in Class-1 of Schedule-II of this Code;
 - (b) secondly, if there is no heir of Class-1, then upon the heirs, being the relatives specified in Class-2 of Schedule-II of this Code;
 - (c) thirdly, if there is no heir of the two classes mentioned in clauses (a) or (b), then upon the other relatives;
 - (d) lastly, if there is no heir belonging to any of the clauses above, then by escheat upon the Government and the Government shall take the estate subject to all the obligations and liabilities, to which an heir would have been subject.

Explanation - In this Chapter, any reference to,—

- (a) “Class-1 heirs”, in relation to the intestate, shall mean the spouse(s), the children, the children and the spouses of predeceased children, the children and the spouses of predeceased children of predeceased children and the parents, limited to the relatives enumerated in Schedule-II;
- (b) “Class-2 heirs”, in relation to the intestate, shall mean the step parents, the siblings, the children and the spouses of predeceased siblings, the siblings of parents, the paternal grandparents and the maternal grandparents, limited to the relatives enumerated in Schedule-II;
- (c) “Other relatives”, in relation to the intestate, shall mean the persons, who are related to the intestate, other than the Class-1 and Class-2 heirs enumerated in Schedule-II;
- (d) “branch of a predeceased child of a predeceased child of an intestate” shall mean her/his surviving spouse(s) and children and “branch of a predeceased child of an intestate” shall mean her/his surviving spouse(s), children and each branch of a predeceased child of a predeceased child of the intestate, which directly descends from that predeceased child:

Provided that the heirs included in such a branch shall be limited to the relatives specified in the list of Class-1 heirs of Schedule-II of this Code.

Manner of succession.

56. The heirs specified in each of the clause (a), (b) or (c) of section 55 shall succeed to the estate of the intestate and shall take such shares, as are specified hereinafter.

Distribution of estate amongst Class-1 heirs.

57. Among the heirs specified in Schedule-II, those in Class-1, shall take simultaneously the estate of an intestate divided amongst them, in accordance with the following rules,—

Rule 1- Every surviving spouse of the intestate, shall take one share each.

Rule 2- Every surviving child of the intestate, shall take one share each.

Rule 3- The heirs in the branch of each predeceased child of the intestate, shall take one share together.

Rule 4- The share devolving upon the branch of a predeceased child, shall be divided equally amongst every surviving spouse, surviving child and branch of a predeceased child of the predeceased child.

Rule 5- The share devolving upon the branch of a predeceased child of a predeceased child, shall be divided equally amongst every surviving spouse and child.

Rule 6- Surviving parents of the intestate, shall together take one share in equal proportion and in case of only one of the parents surviving the intestate, such parent shall alone take one share:

Provided that in case both the parents have together taken one share and one of them subsequently dies, her/his interest in that one share, shall devolve upon the other.

Distribution of estate amongst the Class - 2 heirs.

58. The estate of an intestate, shall be divided amongst Class-2 heirs, in accordance with the following rules,—

Rule 1- The heirs in the entry-I in Class-2, shall be preferred to those in the entry-II; those in the second entry shall be preferred to those in the entry-III; and so on in succession.

Rule 2- The estate of an intestate shall be divided among the heirs specified in any entry-I in Class-2 of the Schedule-II, so that they share equally.

Distribution of estate amongst other relatives.

59. The relatives of the nearest degree, shall succeed together, to the estate of an intestate, to the exclusion of all other relatives, in accordance with the following rule, —

Rule- Each one of the 'other relatives' of the nearest degree shall take one share each.

Illustration

A dies intestate and is survived by his two grandnephews. *A1* and *A2*, and a child of a predeceased grandnephew, *A3*. The estate of *A* shall be divided equally between *A1* and *A2*; *A3* shall not take any share.

General Provisions**Computation of degrees.**

60. For the purposes of computing degrees under this Part, relationship shall be reckoned such that, every generation in ascent or descent constitutes one degree, exclusive of the person, whose relatives are to be reckoned.

Illustration

A dies intestate and is survived by his father *A*₁, grandchild *A*₂, nephew *A*₃ and a first cousin *A*₄.

*A*₁, *A*₂, *A*₃ and *A*₄ are removed from *A* by one, two, three and four degrees respectively.

- | | |
|--|--|
| <p>61. For the purposes of intestate succession, there is no distinction between an heir, who was actually born in the lifetime of an intestate and an heir, who at the time of his death was in the womb, but who has been subsequently born alive and such a child, shall be deemed to be a successor of the intestate, with effect from the time of the death of the intestate.</p> | <p>Right of child in womb.</p> |
| <p>62. Where two persons have died in circumstances rendering it uncertain, whether either of them and if so which, survived the other, then, for all purposes affecting succession to estate, it shall be presumed, until the contrary is proved, that the younger survived the elder.</p> | <p>Presumption in cases of simultaneous deaths.</p> |

Disqualifications

- | | |
|--|---|
| <p>63. Where a widow or widower of any predeceased relative of an intestate has married again in the lifetime of the intestate, such widow or widower shall not succeed to the estate of the intestate.</p> | <p>Disqualification upon remarriage.</p> |
| <p>64. A person, who commits murder or abets the commission of murder, shall be disqualified from succeeding to the estate of the person murdered or any other estate in furtherance of the succession, to which he committed or abetted the commission of the murder.</p> | <p>Murderer disqualified.</p> |
| <p>65. If any person is disqualified from succeeding to any estate under this Code, it shall devolve as if, such person had died before the intestate.</p> | <p>Succession when heir disqualified.</p> |
| <p>66. No person shall be disqualified from succeeding to any estate, on the ground of any disease, defect or deformity or save as provided in this Code, on any other ground whatsoever.</p> | <p>Disease, defect or deformity not to disqualify.</p> |

CHAPTER II

TESTAMENTARY SUCCESSION

Wills and Codicils

- | | |
|---|---|
| <p>67. Every person of sound mind, not being a minor, may dispose of his estate by Will.</p> <p>Explanation 1.- Persons, who are deaf or dumb or blind, are not thereby incapacitated for making a Will, if they are able to know what they do by it.</p> <p>Explanation 2.- A person, who is ordinarily insane, may make a Will during interval, in which he is of sound mind.</p> <p>Explanation 3.- No person can make a Will, while he is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing.</p> | <p>Person capable of making Wills.</p> |
|---|---|

Illustrations

- (i) A can perceive what is going on in his immediate neighbourhood and can answer familiar questions, but has not a competent understanding as to the nature of his estate or the persons, who are kindred to him or in whose favour, it would be proper that he should make his Will. A cannot make a valid Will.

- (ii) A executes an instrument purporting to be his Will, but he does not understand the nature of the instrument, nor the effect of its provisions. This instrument is not a valid Will.
- (iii) A, being very feeble and debilitated, but capable of exercising a judgment, as to the proper mode of disposing of his estate, makes a Will. This is a valid Will.

Will obtained
by fraud,
coercion or
importunity.

68. A Will or any part of a Will, the making of which has been caused by fraud or coercion or by such importunity, as takes away the free agency of the testator, is void.

Illustrations

- (i) A, falsely and knowingly represents to the testator, that the testator's only child is dead or that he has done some undutiful act and thereby induces the testator to make a Will in his favour; such Will has been obtained by fraud and is void.
- (ii) A, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.
- (iii) A, being a prisoner by lawful authority, makes his Will. The Will is not invalid by reason of the imprisonment.
- (iv) A threatens to shoot B or to burn his house or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B, in consequence, makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.
- (v) A, being of sufficient intellect, if undisturbed by the influence of others, to make a Will, yet being so much under the control of B, that he is not a free agent, makes a Will, dictated by B. It appears that, he would not have executed the Will, but for fear of B. The Will is invalid.
- (vi) A, being in so feeble, a state of health, as to be unable to resist importunity, is pressed by B, to make a Will of a certain purport and does so merely to purchase peace and in submission to B. The Will is invalid.
- (vii) A, being in such a state of health, as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him, to induce him to make a Will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his Will, in the manner recommended by B. The Will is not rendered invalid by the intercession and persuasion of B.
- (viii) A, with a view to obtaining a legacy from B, pays him attention and flatters him and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his Will, by which, he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

Will may be
revoked or
altered.

69. A Will is liable to be revoked or altered by the maker of it, at any time, when he is competent to dispose of his estate by Will.

Execution of Wills

70. (1) Execution of unprivileged Wills - Every testator, not being a soldier employed in an expedition or engaged in actual warfare or an airman, so employed or engaged or a mariner at sea, shall execute his Will, according to the following rules,—

Execution of Wills.

- (a) the testator, shall sign or affix his mark to the Will or it shall be signed by some other person, in his presence and by his direction;
- (b) the signature or mark of the testator or the signature of the person signing for him, shall be so placed, that it shall appear that it was intended thereby to give effect to the writing as a Will;
- (c) the Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator or has received from the testator a personal acknowledgment of his signature or mark or of the signature of such other person; and each of the witnesses shall sign the Will, in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time and no particular form of attestation shall be necessary.

(2) Privileged Wills.— Any soldier being employed in an expedition or engaged in actual warfare or an airman so employed or engaged or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his estate, by a Will made, in the manner provided in sub-section (3). Such Wills are called privileged Wills.

Illustrations

- (i) A, a medical officer attached to a regiment is actually employed in an expedition. He is a soldier actually employed in an expedition and can make a privileged Will.
- (ii) A is at sea in a merchant-ship, of which he is the purser. He is a mariner and being at sea, can make a privileged Will.
- (iii) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare and as such can make a privileged Will.
- (iv) A, a mariner of a ship, in the course of a voyage, is temporarily on shore, while the ship is lying in harbour. He is, for the purposes of this section, a mariner at sea and can make a privileged Will.
- (v) A, an admiral, who commands a naval force, but who lives on shore and only occasionally goes on board his ship, is not considered as at sea and cannot make a privileged Will.
- (vi) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier and can make a privileged Will.

(3) Mode of making and rules for executing the privileged Wills.—

- (a) privileged Wills may be in writing or may be made by word of mouth.
- (b) the execution of privileged Wills, shall be governed by the following rules—
 - (i) the Will may be written wholly by the testator, with his own hand. In such case, it need not be signed or attested;

- (ii) it may be written wholly or in part by another person, and signed by the testator. In such case, it need not be attested;
- (iii) if the instrument purporting to be a Will is written wholly or in part by another person and is not signed by the testator, it shall be deemed to be his Will, if it is shown that it was written by the testator's directions or that he recognised it, as his Will;
- (iv) if it appears on the face of the instrument that, the execution of it in the manner intended by the testator was not completed, the instrument shall not, by reason of that circumstance, be invalid:

Provided that his non-execution of it, can be reasonably ascribed to some cause, other than the abandonment of the testamentary intentions expressed in the instrument.

- (v) if the soldier, airman or mariner has written instructions, for the preparation of his Will, but has died before it could be prepared and executed, such instructions shall be considered to constitute his Will;
- (vi) if the soldier, airman or mariner has, in the presence of two witnesses, given verbal instructions for the preparation of his Will and they have been reduced into writing in his lifetime, but he has died before the instrument could be prepared and executed, such instructions shall be considered to constitute his Will, although they may not have been reduced into writing in his presence, nor read over to him;
- (vii) the soldier, airman or mariner may make a Will by word of mouth, by declaring his intentions before two witnesses, present at the same time;
- (viii) a Will made by word of mouth, shall be null, at the expiration of one month, after the testator being still alive, has ceased to be entitled to make a privileged Will.

**Incorporation
of papers by
reference.**

- 71.** If a testator, in a Will or codicil duly attested, refers to any other document then actually written as expressing any part of his intentions, such document shall be deemed to form a part of the Will or codicil, in which it is referred to.

Attestation, Revocation, Alteration and Revival of Wills

**Witness not
disqualified by
interest or by
being
executor.**

- 72.** No person, by reason of interest in or of his being an executor of, a Will, shall be disqualified, as a witness to prove the execution of the Will or to prove the validity or invalidity thereof.

**Revocation of
Will or codicil.**

- 73. (1) Revocation of unprivileged Will or codicil** - No unprivileged Will or codicil, nor any part thereof, shall be revoked otherwise than by another Will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged Will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator with the intention of revoking the same.

Illustrations

- (i) A has made an unprivileged Will. Afterwards, A makes another unprivileged Will, which purports to revoke the first. This is a revocation.

- (ii) A has made an unprivileged Will. Afterwards, A, being entitled to make a privileged Will, makes a privileged Will, which purports to revoke his unprivileged Will. This is a revocation.

- (2) **Revocation of privileged Will or codicil,-** A privileged Will or codicil, may be revoked by the testator, by an unprivileged Will or codicil or by any act expressing an intention to revoke it and accompanied by such formalities, as would be sufficient to give validity to a privileged Will or by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation.- In order to the revocation of a privileged Will or codicil, by an act accompanied by such formalities, as would be sufficient to give validity to a privileged Will, it is not necessary that the testator should at the time of doing that act, be in a situation, which entitles him to make a privileged Will.

74. No obliteration, interlineation or other alteration made in any unprivileged Will, after the execution thereof, shall have any effect, except so far as the words or meaning of the Will have been thereby rendered illegible or undiscernible, unless such alteration has been executed in like manner as hereinbefore is required, for the execution of the Will:

Effect of obliteration, interlineation or alteration of unprivileged Will.

Provided that the Will, as so altered, shall be deemed to be duly executed, if the signature of the testator and the subscription of the witnesses is made, in the margin or on some other part of the Will, opposite or near to such alteration or at the foot or end of or opposite to a memorandum referring to such alteration and written at the end or some other part of the Will.

75. (1) No unprivileged Will or codicil, nor any part thereof, which has been revoked in any manner, shall be revived otherwise than by the re-execution thereof or by a codicil executed in a manner hereinbefore required and showing an intention to revive the same.

Revival of unprivileged Will.

- (2) When any Will or codicil, which has been partly revoked and afterwards wholly revoked, is revived, such revival shall not extend to so much thereof, as has been revoked before the revocation of the whole thereof, unless an intention to the contrary is shown by the Will or codicil.

Construction of Wills

76. It is not necessary that any technical words or terms of art be used in a Will, but only that the wording be such that the intentions of the testator can be known therefrom.
77. For the purpose of determining questions as to what person or what estate is denoted by any words used in a Will, a court shall inquire into every material fact relating to the persons, who claim to be interested under such Will, the estate which is claimed as the subject of disposition, the circumstances of the testator and of his family and into every fact knowledge of which may conduce to the right application of the words, which the testator has used.

Wording of Wills.

Inquiries to determine questions, as to object or subject of Will.

Illustrations

- (i) A, by his Will, bequeaths 1,00,000 rupees to his eldest son or to his youngest grandchild or to his cousin, Deeksha. A court may make inquiry in order to ascertain, to what person the description in the Will applies.

- (ii) A, by his Will, leaves to B “my estate called Satpura Farms”. It may be necessary to take evidence, in order to ascertain what the subject-matter of the bequest is that is to say, what estate of the testator is called Satpura Farms.
- (iii) A, by his Will, leaves to B “the estate which I purchased of C”. It may be necessary to take evidence, in order to ascertain what estate the testator purchased of C.

Misnomer or mis-description of object.

- 78.** (1) Where the words used in a Will, to designate or describe a legatee or a class of legatees sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.
- (2) A mistake in the name of a legatee, may be corrected by a description of him and a mistake in the description of a legatee, may be corrected by the name.

Illustrations

- (i) A, bequeaths a legacy to “Abhishek, the second son of my brother Mohan”. The testator has an only brother named Mohan, who has no son named Abhishek, but has a second son, whose name is Aakash. Aakash will have the legacy.
- (ii) A, bequeaths a legacy to “Abhishek, the second son of my brother Mohan”. The testator has an only brother, named Mohan, whose first son is named Abhishek and whose second son is named Aakash. Abhishek will have the legacy.
- (iii) The testator gives his residuary estate to be divided among “my seven children” and proceeding to enumerate them, mentions six names only. This omission will not prevent the seventh child from taking a share with the others.
- (iv) The testator, having six grandchildren, makes a bequest to “my six grandchildren” and proceeding to mention them by their names, mentions one twice over omitting another altogether. The one, whose name is not mentioned will take a share with the others.
- (v) The testator bequeaths “1,00,000 rupees to each of the three children of A”. At the date of the Will, A has four children. Each of these four children will, if he survives the testator, receive a legacy of 1,00,000 rupees.

When words may be supplied.

- 79.** Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Illustration

The testator gives a legacy of “50,000” to his daughter A and a legacy of “50,000 rupees” to his daughter B. A will take a legacy of 50,000 rupees.

Rejection of erroneous particulars in description of subject.

- 80.** If the thing, which the testator intended to bequeath can be sufficiently identified from the description of it given in the Will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous and the bequest shall take effect.

Illustration

A bequeaths to B “my marsh-lands lying in L and in the occupation of X”. The testator had marsh-lands lying in L but had no marsh-lands in the occupation of X. The words “in the occupation of X” shall be rejected as erroneous and the marsh-lands of the testator lying in L, will pass by the bequest.

- 81.** If a Will mentions several circumstances as descriptive of the thing which the testator intends to bequeath and there is any estate of his in respect of which, all those circumstances exist, the bequest shall be considered as limited to such estate and it shall not be lawful to reject any part of the description as erroneous, because the testator had other estate, to which such part of the description does not apply.

When part of description may not be rejected as erroneous.

Explanation - In judging, whether a case falls within the meaning of this section, any words which would be liable to rejection under section 80 shall be deemed to have been struck out of the Will.

Illustrations

- (i) A bequeaths to B "my marsh-lands lying in L and in the occupation of X". The testator had marsh-lands lying in L, some of which were in the occupation of X and some not in the occupation of X. The bequest will be considered as limited, to such of the testator's marsh-lands in L, as were in the occupation of X.
- (ii) A bequeaths to B "my marsh-lands lying in L and in the occupation of X, comprising 1,000 bighas of lands". The testator had marsh-lands lying in L, some of which were in the occupation of X and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class or to the whole taken together. The measurement will be considered as struck out of the Will and such of the testator's marsh-lands lying in L, as were in the occupation of X, shall alone pass by the bequest.

- 82.** Where the words of a Will are unambiguous, but it is found by extrinsic evidence, that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Extrinsic evidence admissible in cases of patent ambiguity.

Illustrations

- (i) A man, having two cousins of the name of Ritu, bequeaths a sum of money to "my cousin Ritu". It appears that there are two persons, each answering the description in the Will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible, to show which of the two applications was intended.
- (ii) A, by his Will, leaves to B "my estate called Satpura Farmhouse". It turns out that he had two estates called Satpura Farmhouse. Evidence is admissible to show, which estate was intended.

- 83.** Where there is an ambiguity or deficiency on the face of a Will, no extrinsic evidence, as to the intentions of the testator shall be admitted.

Extrinsic evidence inadmissible in case of patent ambiguity or deficiency.

Illustrations

- (i) A man has an aunt, Ritu and a cousin, Priyanka and has no aunt of the name of Priyanka. By his Will, he bequeaths 1,00,000 rupees to "my aunt, Ritu" and 1,00,000 rupees to "my cousin, Priyanka" and afterwards bequeaths 2,00,000 rupees to "my before-mentioned aunt, Priyanka". There is no person, to whom the description given in the Will can apply and evidence is not admissible, to show who was meant by "my before-mentioned aunt, Priyanka". The bequest is, therefore, void for uncertainty under section 91.

- (ii) A bequeaths 1,00,000 rupees to leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.
- (iii) A bequeaths to B rupees or "my estate of". Evidence is not admissible to show, what sum or what estate the testator intended to insert.

Meaning of clause to be collected from entire Will.

84. The meaning of any clause in a Will is to be collected from the entire instrument and all its parts are to be construed with reference to each other.

Illustrations

- (i) The testator gives to B, a specific fund or estate at the death of A and by a subsequent clause, gives the whole of his estate to A. The effect of the several clauses taken together is to vest the specific fund or estate in A for life and after his death in B, it appearing from the bequest to B that the testator meant to use in a restricted sense, the words in which he describes what he gives to A.
- (ii) Where a testator having an estate, one part of which is called Satpura Farm, bequeaths the whole of his estate to A and in another part of his Will, bequeaths Satpura Farm to B, the latter bequest is to be read as an exception out of the first, as if he had said "I give Satpura Farm to B and all the rest of my estate to A".

When words may be understood in restricted sense, and when in sense wider than usual.

85. General words may be understood in a restricted sense, where it may be collected from the Will, that the testator meant to use them in a restricted sense and words may be understood in a wider sense, than that which they usually bear, where it may be collected from the other words of the Will, that the testator meant to use them in such wider sense.

Illustrations

- (i) A testator gives to A, "my farm in the occupation of B" and to C "all my marsh-lands in L". Part of the farm in the occupation of B consists of marsh-lands in L and the testator also has other marsh-lands in L. The general words, "all my marsh-lands in L", are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm, which consists of marsh-lands in L.
- (ii) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons and chest of clothes and to his friend, A (a shipmate) his red box, clasp-knife and all things not before bequeathed. The testator's share in a house does not pass to A, under this bequest.
- (iii) A, by his Will, bequeathed to B, all his household furniture, plate, linen, books, pictures and all other goods of whatever kind and afterwards bequeathed to B, a specified part of his estate. Under the first bequest B is entitled only to such articles of the testator's, as are of the same nature, with the articles therein enumerated.

Which of two possible construction preferred.

86. Where a clause is susceptible of two meanings, according to one of which it has some effect and according to the other of which it can have none, the former shall be preferred.

- | | |
|---|---|
| <p>87. No part of a Will shall be rejected as destitute of meaning, if it is possible to put a reasonable construction upon it.</p> | <p>No part rejected, if it can be reasonably construed.</p> |
| <p>88. If the same words occur in different parts of the same Will, they shall be taken to have been used everywhere in the same sense, unless a contrary intention appears.</p> | <p>Interpretation of words repeated in different parts of Will.</p> |
| <p>89. The intention of the testator shall not be set aside because it cannot take effect to the full extent, but effect is to be given to it, as far as possible.</p> | <p>Testator's intention to be effectuated, as far as possible.</p> |
| <p>90. Where two clauses of gifts in a Will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.</p> | <p>The last two inconsistent clauses prevails.</p> |

Illustrations

- (i) The testator by the first clause of his Will, leaves his estate of Sagar "to A" and by the last clause of his Will, leaves it "to B and not to A". B will have it.
- (ii) If a man, at the commencement of his Will gives his house to A and at the close of it, directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition will prevail.

- 91.** A Will or bequest not expressive of any definite intention, is void for uncertainty.

Will or bequest void for uncertainty.

Illustration

If a testator says "I bequeath goods to A" or "I bequeath to A" or "I leave to A, all the goods mentioned in the Schedule" and no Schedule is found or "I bequeath 'money', 'wheat', 'oil' or the like, without saying how much, this is void.

- 92.** The description contained in a Will of estate, the subject of gift, shall, unless a contrary intention appears by the Will, be deemed to refer to and comprise the estate answering that description, at the death of the testator.
- 93.** Unless a contrary intention appears by the Will, a bequest of the estate of the testator, shall be construed to include, any estate, which he may have power to appoint, by Will, to any object, he may think proper and shall operate as an execution of such power and a bequest of estate described in a general manner shall be construed, to include any estate, to which such description may extend, which he may have power to appoint, by Will, to any object he may think proper and shall operate as an execution of such power.
- 94.** Where estate is bequeathed to or for the benefit of certain objects as a specified person, may appoint or for the benefit of certain objects, in such proportions as a specified person may appoint and the Will does not provide for the event of no appointment being made, if the power given by the Will is not exercised, the estate belongs to all the objects of the power in equal shares.

Words describing subject refer to estate answering description at testator's death.

Power of appointment executed by general bequest.

Implied gift to objects of power in default of appointment.

Illustration

A, by his Will bequeaths a fund to his wife for her life, and directs that at her death, it shall be divided among his children, in such proportions, as she shall appoint. The widow dies without having made any appointment. The fund will be divided equally among the children.

Bequest to heirs, etc. of particular person without qualifying terms.

95. Where a bequest is made to the "heirs" or "own heirs" or "relatives" or "nearest relatives" or "family" or "kindred" or "nearest of kin" or "next-of-kin" of a particular person without any qualifying terms and the class so designated, forms the direct and independent object of the bequest, the estate bequeathed shall be distributed, as if it had belonged to such person and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such estate.

Illustrations

- (i) A leaves his estate "to my own nearest relatives". The estate goes to those, who would be entitled to it, if A had died intestate, leaving assets, for the payment of his debts independently of such estate.
- (ii) A, bequeaths 10,000 rupees "to B for his life and after the death of B, to my own heirs". The legacy after B's death belongs to those, who would be entitled to it, if it had formed part of A's unbequeathed estate.
- (iii) A leaves his estate to B, but if B dies before him, to B's next-of kin; B dies before A, the estate devolves, as if it had belonged to B and he had died intestate, leaving assets for the payment of his debts independently of such estate.
- (iv) A leaves 10,000 rupees "to B for his life and after his death to the heirs of C". The legacy goes, as if it had belonged to C and he had died intestate, leaving assets for the payment of his debt independently of the legacy.

Bequest to 'representatives' etc. of particular person.

96. Where a bequest is made to the "representatives" or "legal representatives" or "personal representatives" or "executors or administrators" of a particular person and the class so designated, forms the direct and independent object of the bequest, the estate bequeathed shall be distributed, as if it had belonged to such person and he had died intestate in respect of it.

Illustration

A bequest is made to the "legal representatives" of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy and will apply it in the first place, to the discharge of such part of A's debt, as may remain unpaid. If there be any surplus, B will pay it to those persons, who at A's death would have been entitled to receive any estate of A, which might remain after payment of his debts or to the representatives of such persons.

Bequest without words of limitation.

97. Where estate is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the Will, that only a restricted interest was intended for him.

Bequest in alternative.

98. Where an estate is bequeathed to a person with a bequest in the alternative to another person or to a class of persons, then, if a contrary intention does not appear by the Will, the legatee first named shall be entitled to the legacy, if he is alive at the time when it takes effect, but if, he is then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

Illustrations

- (i) A bequest is made to A or to B. A survives the testator. B takes nothing.
- (ii) A bequest is made to A or to B. A dies after the date of the Will and before the testator. The legacy goes to B.

- (iii) A bequest is made to A or to B. A is dead at the date of the Will. The legacy goes to B.
- (iv) Estate is bequeathed to A or his heirs. A survives the testator. A takes the estate absolutely.
- (v) Estate is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.
- (vi) Estate is bequeathed to A for life and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.
- (vii) Estate is bequeathed to A for life and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death, the bequest to the heirs of B takes effect.

99. Where estate is bequeathed to a person and words are added, which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the Will.

Effect or words describing a class added to person.

Illustrations

- (i) A bequest is made –
 - to A and his children,
 - to A and his children by his present wife,
 - to A and his heirs,
 - to A and the heirs of his body,
 - to A and the heirs male of his body,
 - to A and the heirs female of his body,
 - to A and his issue,
 - to A and his family,
 - to A and his descendants,
 - to A and his representatives,
 - to A and his personal representatives,
 - to A, his executors and administrators.

In each of these cases, A takes the whole interest, which the testator had in the estate.

- (ii) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.
- (iii) A bequest is made to A, for life and after his death to his issue. At the death of A, the estate belongs in equal shares to all persons, who then answer the description of issue of A.

Bequest to class of persons under general description only.

100. Where a bequest is made to a class of persons, under a general description only, no one, to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Construction of terms.

101. In a Will,-

- (1) the word "children", applies only to lineal descendants in the first degree of the person, whose "children" are spoken of;
- (2) the word "grandchildren", applies only to lineal descendants in the second degree of the person, whose "grandchildren" are spoken of;
- (3) the words "nephews" and "nieces", apply only to children of brothers or sisters;
- (4) the word "descendants", applies to all lineal descendants, whatever of the person, whose "descendants" are spoken of;
- (5) words expressive of collateral relationship, apply alike to relatives of full and of half-blood; and
- (6) all words expressive of relationship, apply to a child in the womb, who is afterwards born alive.

Rules of construction, where Will purports to make bequests to same person.

102. Where a Will purports to make two bequests to the same person and a question arises, whether the testator intended to make the second bequest instead of or in addition to the first, if there is nothing in the Will to show what he intended, the following rules shall have effect in determining the construction to be put upon the Will,-

- (1) If the same specific thing is bequeathed twice to the same legatee in the same Will or in the Will and again in the codicil, he is entitled to receive that specific thing only.
- (2) Where one and the same Will or one and the same codicil purports to make in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.
- (3) Where two legacies of unequal amount are given to the same person in the same Will or in the same codicil, the legatee is entitled to both.
- (4) Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a Will and the other by a codicil or each by a different codicil, the legatee is entitled to both legacies.

Explanation- In clauses (1) to (4) of this section, the word "Will" does not include a codicil.

Illustrations

- (i) A, having ten shares and no more, in the State Bank of India, made his Will, which contains near its commencement the words "I bequeath my ten shares in the State Bank of India to B". After other bequests, the Will concludes with the words "and I bequeath my ten shares in the State Bank of India to B". B is entitled simply to receive A's ten shares in the State Bank of India.

- (ii) A, having one diamond ring, which was given to him by B, bequeaths to C the diamond ring which was given by B. A afterwards made a codicil to his Will and thereby, after giving other legacies, he bequeathed to C the diamond ring, which was given to him by B. C can claim nothing, except the diamond ring, which was given to A by B.
- (iii) A, by his Will, bequeaths to B the sum of 50,000 rupees and afterwards in the same Will, repeats the bequest in the same words. B is entitled to one legacy of 50,000 rupees only.
- (iv) A, by his Will, bequeaths to B the sum of 50,000 rupees and afterwards in the same Will, bequeaths to B the sum of 60,000 rupees. B is entitled to receive 1,10,000 rupees.
- (v) A, by his Will, bequeaths to B 50,000 rupees and by a codicil to the Will, he bequeaths to him 50,000 rupees. B is entitled to receive 1,00,000 rupees.
- (vi) A, by one codicil to his Will, bequeaths to B 50,000 rupees and by another codicil bequeaths to him 60,000 rupees. B is entitled to receive 1,10,000 rupees.
- (vii) A, by his Will, bequeaths "50,000 rupees to B because she was my nurse" and in another part of the Will bequeaths 50,000 rupees to B "because she went to Finland with my children". B is entitled to receive 1,00,000 rupees.
- (viii) A, by his Will, bequeaths to B the sum of 50,000 rupees and also in another part of the Will, an annuity of 4000 rupees. B is entitled to both legacies.
- (ix) A, by his Will, bequeaths to B the sum of 50,000 rupees and also bequeaths to him the sum of 50,000 rupees, if he shall attain the age of 18. B is entitled absolutely to one sum of 50,000 rupees and takes a contingent interest in another sum of 50,000 rupees.

103. A residuary legatee may be constituted by any words that show an intention on the part of the testator, that the person designated shall take the surplus or residue of his estate.

Constitution of residuary legatee.

Illustrations

- (i) A makes her Will consisting of several testamentary papers, in one of which are contained the following words: - "I think there will be something left, after all funeral expenses etc. to give to B, now at school, towards equipping him to any profession, he may hereafter be appointed to". B is constituted residuary legatee.
- (ii) A makes his Will with the following passage at the end of it: - "I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby, desire B to do and keep the residue for her own use and pleasure". B is constituted the residuary legatee.
- (iii) A bequeaths all his estate to B, except certain stock and funds, which he bequeaths to C. B is the residuary legatee.

104. Under a residuary bequest, the legatee is entitled to all estate belonging to the testator at the time of his death, of which he has not made any other testamentary disposition, which is capable of taking effect.

Estate to which residuary legatee entitled.

Illustration

A by his Will bequeaths certain legacies, of which one is void and another lapses by the death of the legatee. He bequeaths the residue of his estate to B. After the date of his Will, A purchases a house, which belongs to him at the time of his death. B is entitled to two legacies and the house as part of the residue.

Time of vesting legacy in general terms.

105. If a legacy is given in general terms, without specifying the time, when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator and if he dies without having received it, it shall pass to his representatives.

In what case legacy lapses.

106. (1) If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's estate, unless it appears by the Will that the testator intended that it should go to some other person.

(2) In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations

- (i) The testator bequeaths to B "50,000 rupees, which B owes me". B dies before the testator, the legacy lapses.
- (ii) A bequest is made to A and his children. A dies before the testator or happens to be dead, when the Will is made. The legacy to A and his children lapses.
- (iii) A legacy is given to A and in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.
- (iv) A sum of money is bequeathed to A for life and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.
- (v) A sum of money is bequeathed to A on his completing his eighteenth year and in case he should die before he completes his eighteenth year to B. A completes his eighteenth year and dies in the lifetime of the testator. The legacy to A lapses and the bequest to B does not take effect.
- (vi) The testator and the legatee perished in the same ship-wreck. There is no evidence to show, who died first. The legacy lapses.

Legacy does not lapse, if one of two joint legatees dies before testator.

107. If a legacy is given to two persons jointly and one of them dies before the testator, the other legatee takes the whole.

Illustration

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

Effect of words showing testator's intention to give distinct shares.

108. If a legacy is given to legatees in words, which show that the testator intended to give them distinct shares of it, then, if any legatee dies before the testator, so much of the legacy, as was intended for him shall fall into the residue of the testator's estate.

Illustration

A sum of money is bequeathed to A, B and C, to be equally divided among them. A dies before the testator, B and C will only take so much, as they would have had, if A had survived the testator.

109. Where a share, which lapses is a part of the general residue bequeathed by the Will, that share shall go as undisposed of.

When lapsed share goes as undisposed of.

Illustration

The testator bequeaths the residue of his estate to A, B and C, to be equally divided among them. A dies before the testator. His one-third of the residue goes as undisposed of.

110. Where a bequest has been made to any child or other lineal descendant of the testator and the legatee dies in the lifetime of the testator, but his any lineal descendant survives the testator, the bequest shall not lapse, but shall take effect, as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention appears by the Will.

When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

Illustration

A makes his Will, by which he bequeaths a sum of money to his son, B, for his own absolute use and benefit. B dies before A leaving a son, C, who survives A and having made his Will, whereby he bequeaths all his estate to his widow, D. The money goes to D.

111. Where a bequest is made to one person, for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person, to whom the bequest is made.

Bequest to A for benefit of B does not lapse by A's death.

112. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such, as are alive at the testator's death.

Survivorship in case of bequest to described class.

Exception.- If estate is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred, until a time later than the death of the testator by reason of a prior bequest or otherwise, the estate shall at that time go to such of them, as are then alive and to the representatives of any of them, who have died since the death of the testator.

Illustrations

- (i) A bequeaths 1,00,000 rupees to "the children of B" without saying, when it is to be distributed among them. B had died previous to the date of the Will, leaving three children, C, D and E. E died after the date of the Will, but before the death of A. C and D survive A. The legacy will belong to C and D, to the exclusion of the representatives of E.
- (ii) A lease for years of a house, was bequeathed to A for his life and after his death to the children of B. At the death of the testator, B had two children living, C and D and he never had any other child. Afterwards, during the lifetime of A, C died, leaving E, his executor. D has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.
- (iii) A sum of money was bequeathed to A for her life and after her death to the children of B. At the death of the testator, B had two children living, C and D and after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a Will, E having made no Will. A has died leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E and one to F.

- (iv) A bequeaths one-third of his lands to B for his life and after his death to the sisters of B. At the death of the testator, B had two sisters living, C and D and after that event another sister E was born. C died during the life of B. D and E have survived B. One-third of A's land belong to D, E and the representatives of C, in equal shares.
- (v) A bequeaths 1,00,000 rupees to B for life and after his death equally among the children of C. Up to the death of B, C had not had any child. The bequest after the death of B, is void.
- (vi) A bequeaths 1,00,000 rupees to "all the children born or to be born" of B to be divided among them at the death of C. At the death of the testator B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F and G, to the exclusion of the after-born child of B.
- (vii) A bequeaths a fund to the children of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D and the representatives of E, to the exclusion of any child, who may be born to B after C's attaining majority.

Void Bequests

Bequest to person by particular description, who is not in existence at testator's death.

113. Where a bequest is made to a person by a particular description and there is no person in existence at the testator's death, who answers the description, the bequest is void.

Exception.- If estate is bequeathed to a person described as standing in a particular degree of kindred, to a specified individual, but his possession of it is deferred, until a time later than the death of the testator, by reason of a prior bequest or otherwise and if a person, answering the description is alive at the death of the testator or comes into existence between that event and such later time, the estate shall, at such later time, go to that person or if he is dead, to his representatives.

Illustrations

- (i) A bequeaths 1,00,000 rupees to the eldest son of B. At the death of the testator, B has no son. The bequest is void.
- (ii) A bequeaths 1,00,000 rupees to B for life and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death the legacy goes to C's son.
- (iii) A bequeaths 1,00,000 rupees to B for life and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son, named D, is born to C. D dies, then B dies. The legacy goes to the representative of D.
- (iv) A bequeaths his estate of Satpura Farms to B for life and at his death, to the eldest son of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

- (v) A bequeaths 1,00,000 rupees to the eldest son of C, to be paid to him, after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him, during the life of B and is alive at B's death. C's son is entitled to 100,000 rupees.

114. Where a bequest is made to a person, not in existence, at the time of the testator's death, subject to a prior bequest contained in the Will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Bequest to person not in existence at testator's death subject to prior bequest.

Illustrations

- (i) Estate is bequeathed to A for his life and after his death to his eldest son for life and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person, not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.
- (ii) A fund is bequeathed to A for his life and after his death to his daughters. A survives the testator. A has daughters, some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.
- (iii) A fund is bequeathed to A for his life and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled so that, it may belong to herself for life and may be divisible among her children, after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards, who survive him. Here the direction for a settlement has the effect in the case of each daughter, who marries under eighteen of substituting for the absolute bequest to her, a bequest to her merely for her life, that is to say, a bequest to a person not in existence at the time of the testator's death of something, which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.
- (iv) A bequeaths a sum of money to B for life and directs that upon the death of B, the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life and may be divided among her children, after her death. B has no daughter living at the time of the testator's death. In this case, the only bequest to the daughters of B is contained in the direction to settle the fund and this direction amounts to a bequest, to persons not yet born of a life-interest in the fund, that is to say, of something, which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

115. No bequest is valid, whereby the vesting of the thing bequeathed may be delayed beyond the life-time of one or more persons living at the testator's death and the minority of some person, who shall be in existence at the expiration of that period and to whom, if he attains full age, the thing bequeathed is to belong.

Rule against perpetuity.

Illustrations

- (i) A fund is bequeathed to A, for his life and after his death to B for his life; and after B's death to such of the sons of B, as shall first attain the age of 25. A and B survive the testator. Here the son of B, who shall first attain the age of 25 may be a son born after the death of the testator; such son may not attain 25, until more than 18 years have elapsed from the death of the longer liver of A and B and the vesting of the fund may thus, be delayed beyond the lifetime of A and B and the minority of the sons of B. The bequest after B's death is void.
- (ii) A fund is bequeathed to A for his life and after his death to B for his life and after B's death to such of B's sons, as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's death and the time, as when either of them will attain 25, necessarily falls within his own lifetime. The bequest is valid.
- (iii) A fund is bequeathed to A for his life and after his death to B for his life, with a direction that after B's death it shall be divided amongst such of B's children, as shall attain the age of 18, but that, if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest, at the expiration of 18 years from the death of B, a person living at the testator's death. All the bequests are valid.
- (iv) A fund is bequeathed to trustees, for the benefit of the testator's daughters, with a direction that, if any of them marry under age, her share of the fund shall be settled, so as to devolve after her death upon such of her children, as shall attain the age of 18. Any daughter of the testator, to whom the direction applies must be in existence at his death and any portion of the fund, which may eventually be settled as directed must vest not later than 18 years, from the death of the daughters, whose share it was. All these provisions are valid.

Bequest to a class some of whom may come under rules in sections 114 and 115.

116. If a bequest is made to a class of persons with regard to some of whom, it is inoperative by reason of the provisions of section 114 or 115, such bequest shall be void in regard to those persons only and not in regard to the whole class.

Illustrations

- (i) A fund is bequeathed to A for life and after his death to all his children, who shall attain the age of 25. A survives the testator and has some children living at the testator's death. Each child of A's living at the testator's death, must attain the age of 25 (if at all), within the limits allowed for a bequest. But A may have children, after the testator's death, some of whom, may not attain the age of 25, until more than 18 years have elapsed after the death of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death and in regard to those, who do not attain the age of 25, within 18 years after A's death, but is operative in regard to the other children of A.
- (ii) A fund is bequeathed to A for his life and after his death to B, C, D and all other children of A, who shall attain the age of 25. B, C, D are children of A living at the testator's death. In all other respects the case is the same, as that supposed in illustration (i). Although the mention of B, C and D does not prevent the bequest, from being regarded as a bequest to a class, it is not wholly void. It is operative as regards any of the children B, C or D, who attain the age of 25, within 18 years after A's death.

117. Where by reason of any of the rules contained in sections 114 and 115, any bequest in favour of a person or of a class of persons is void, in regard to such person or the whole of such class, any bequest contained in the same Will and intended to take effect, after or upon failure of such prior bequest is also void.

Bequest to take effect on failure of prior bequest.

Illustrations

- (i) A fund is bequeathed to A for his life and after his death to such of his sons, as shall first attain the age of 25, for his life and after the death of such son to B. A and B survive the testator. The bequest to B is intended to take effect, after the bequest to such of the sons of A, as shall first attain the age of 25, which bequest is void under section 115. The bequest to B is void.
- (ii) A fund is bequeathed to A for his life and after his death to such of his sons, as shall first attain the age of 25 and if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons, as shall first attain the age of 25, which bequest is void under section 115. The bequest to B is void.
118. (1) Where the terms of a Will direct that the income arising from any estate shall be accumulated, either wholly or in part during any period longer than a period of eighteen years, from the death of the testator, such direction shall, save as hereinafter provided, be void to the extent, to which the period during which the accumulation is directed, exceeds the aforesaid period, and at the end of such period of eighteen years, the estate and the income thereof shall be disposed of, as if the period during which the accumulation has been directed to be made had elapsed.
- (2) This section shall not affect any direction for accumulation, for the purpose of,-
- the payment of the debts of the testator or any other person taking any interest under the Will; or
 - the provision of portions for children or remoter issue of the testator or of any other person taking any interest under the Will; or
 - the preservation or maintenance of any estate bequeathed;
- and such direction may be made accordingly.

Effect of direction for accumulation.

Vesting of Legacies

119. Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it, at the proper time shall, unless a contrary intention appears by the Will, become vested in the legatee on the testator's death and shall pass to the legatee's representatives, if he dies before that time and without having received the legacy and in such cases the legacy is from the testator's death said to be vested in interest.

Date of vesting of legacy, when payment or possession postponed.

Explanation, - An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision, whereby the payment or possession of the thing bequeathed is postponed or whereby a prior interest therein is bequeathed to some other person or whereby the income arising from the fund bequeathed is directed to be accumulated, until the time of payment arrives or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Illustrations

- (i) A bequeaths to B 10,000 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B and if he dies before C, his representatives are entitled to the legacy.
- (ii) A bequeaths to B 10,000 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.
- (iii) A fund is bequeathed to A for life and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.
- (iv) A fund is bequeathed to A, until B attains the age of 18 and then to B. The legacy to B is vested in interest from the testator's death.
- (v) A bequeaths the whole of his estate to B, upon trust to pay certain debts out of the income and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.
- (vi) A fund is bequeathed to A, B and C in equal shares to be paid to them on their attaining the age of 18, respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vested in interest in A, B and C, subject to be divested in case A, B and C, all die under 18 and upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

**Date of vesting,
when legacy
contingent
upon specified
uncertain event.**

- 120.** (1) A legacy bequeathed in case, a specified uncertain event shall happen does not vest, until that event happens.
- (2) A legacy bequeathed in case, a specified uncertain event shall not happen does not vest, until the happening of that event becomes impossible.
- (3) In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception, - Where a fund is bequeathed, to any person, upon his attaining a particular age and the Will also gives to him absolutely the income to arise from the fund before he reaches that age or directs the income or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

Illustrations

- (i) A legacy is bequeathed to D in case A, B and C shall all die under the age of 18. D has a contingent interest in the legacy, until A, B and C all die under 18 or one of them attains that age.
- (ii) A sum of money is bequeathed to A "in case, he shall attain the age of 18" or "when, he shall attain the age of 18". A's interest in the legacy is contingent, until the condition is fulfilled by his attaining that age.
- (iii) An estate is bequeathed to A for life and after his death to B, if B shall then be living, but if B shall not be then living, to C. A, B and C survive the testator. B and C each take a contingent interest in the estate until the event, which is to vest it in one or in the other has happened.
- (iv) An estate is bequeathed, as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

- (v) A legacy is bequeathed to A, when she shall attain the age of 18, with a proviso that, if she does not attain the age of 18, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy.
 - (vi) An estate is bequeathed to A, until he shall marry and after that event to B. B's interest in the bequest is contingent, until the condition is fulfilled by A's marrying.
 - (vii) An estate is bequeathed to A, until he shall take advantage of any law for the relief of insolvent debtors and after that event to B. B's interest in the bequest is contingent, until A takes advantage of such a law.
 - (viii) An estate is bequeathed to A, if he shall pay 50,000 rupees to B. A's interest in the bequest is contingent, until he has paid 50,000 rupees to B.
 - (ix) A leaves his farm of Indore to B; if B shall convey his own farm of Bhopal to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.
 - (x) A fund is bequeathed to A, if B shall not marry C, within five years, after the testator's death. A's interest in the legacy is contingent, until the condition is fulfilled by the expiration of the five years, without B's having married C or by the occurrence, within that period of an event, which makes the marriage of B and C impossible.
 - (xi) A fund is bequeathed to A, if B shall not make any provision for him by Will. The legacy is contingent, until B's death.
 - (xii) A bequeaths to B, 50,000 rupees a year, upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.
 - (xiii) A bequeaths to B, 50,000 rupees, when he shall attain the age of 18 and directs that a certain sum, out of another fund, shall be applied for his maintenance, until he arrives at that age. The legacy is contingent.
- 121.** Where a bequest is made only to such members of a class, as shall have attained a particular age, a person, who has not attained that age cannot have a vested interest in the legacy.

Vesting of interest in bequest to such members of a class, as shall have attained particular age.

Illustration

A fund is bequeathed to such of the children of A, as shall attain the age of 18, with a direction that, while any child of A shall be under the age of 18, the income of the share, to which it may be presumed, he will be eventually entitled shall be applied for his maintenance and education. No child of A, who is under the age of 18 has a vested interest in the bequest.

Onerous Bequests

- 122.** Where a bequest imposes an obligation on the legatee, he can take nothing by it, unless he accepts it fully.

Onerous bequests.

Illustration

A, having shares in X, a prosperous joint stock company and also shares in Y, a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies; B refuses to accept the shares in Y. He forfeits the shares in X.

One of two separate and independent bequests to same person, may be accepted and other refused.

123. Where a Will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

Illustration

A, having a lease for a term of years of a house at a rent, which he and his representatives are bound to pay during the term and which is higher than the house can be let for, bequeaths to B, the lease and a sum of money. B refuses to accept the lease. He will not by this refusal forfeit the money.

Contingent Bequests

Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.

124. Where a legacy is given, if a specified uncertain event shall happen and no time is mentioned in the Will, for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period, when the fund bequeathed is payable or distributable.

Illustration

- (i) A legacy is bequeathed to A and in case of his death to B. If A survives the testator, the legacy to B does not take effect.
- (ii) A legacy is bequeathed to A and in case of his death without children to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.
- (iii) A legacy is bequeathed to A, when and if he attains the age of 18 and in case of his death to B. A attains the age of 18. The legacy to B does not take effect.
- (iv) A legacy is bequeathed to A for life and after his death to B, and "in case of B's death without children" to C. The words "in case of B's death without children" are to be understood as meaning, in case B dies without children during the lifetime of A.
- (v) A legacy is bequeathed to A for life and after his death to B and "in case of B's death" to C. The words "in case of B's death" are to be considered as meaning "in case B dies in the lifetime of A".

Bequest to such of certain persons, as shall be surviving at some period not specified.

125. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them, as are alive at the time of payment or distribution, unless a contrary intention appears by the Will.

Illustration

- (i) Estate is bequeathed to A and B, to be equally divided between them or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator and B survives the testator, it goes to B.
- (ii) Estate is bequeathed to A for life and after his death to B and C, to be equally divided between them or to the survivor of them. B dies during the life of A, C survives A. At A's death, the legacy goes to C.

- (iii) Estate is bequeathed to A for life and after his death to B and C or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator, B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.
- (iv) Estate is bequeathed to A for life and after his death to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterward C dies in the lifetime of A. The legacy goes to the representative of C.

Conditional Bequests

126. A bequest upon an impossible condition is void.

Bequest upon impossible condition.

Illustrations

- (i) An estate is bequeathed to A, on condition that he shall walk 100 miles in an hour. The bequest is void.
- (ii) A bequeaths 50,000 rupees to B, on condition that he shall marry A's daughter. A's daughter was dead, at the date of the Will. The bequest is void.

127. A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

Bequest upon illegal or immoral condition.

Illustrations

- (i) A bequeaths 50,000 rupees to B, on condition that he shall murder C. The bequest is void.
- (ii) A bequeaths 50,000 rupees to his niece, if she will desert her husband. The bequest is void.

128. Where a Will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled, if it has been substantially complied with.

Fulfilment of condition precedent to vesting of legacy.

Illustrations

- (i) A legacy is bequeathed to A, on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A, previous to the marriage. E has been personally informed by A of his intentions and has made no objection. A has fulfilled the condition.
- (ii) A legacy is bequeathed to A, on condition that he shall marry with the consent of B, C and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.
- (iii) A legacy is bequeathed to A, on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only. A has not fulfilled the condition.

- (iv) A legacy is bequeathed to A, on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.
- (v) A legacy is bequeathed to A, on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the condition.
- (vi) A makes his Will, whereby he bequeaths a sum of money to B, if B shall marry with the consent of A's executors. B marries during the lifetime of A and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.
- (vii) A legacy is bequeathed to A, if he executes a certain document, within a time specified in the Will. The document is executed by A within a reasonable time, but not within the time specified in the Will. A has not performed the condition and is not entitled to receive the legacy.

Bequest to 'A' and on failure of prior bequest to 'B'.

129. Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect, upon the failure of the prior bequest although the failure may not have occurred in the manner contemplated by the testator.

Illustrations

- (i) A bequeaths a sum of money to his own children surviving him and if they all die under 18 to B. A dies without having ever had a child. The bequest to B takes effect.
- (ii) A bequeaths a sum of money to B, on condition that he shall execute a certain document, within three months after A's death and if he should neglect to do so to C. B dies in the testator's lifetime. The bequest to C takes effect.

When second bequest not to take effect on failure of first.

130. Where the Will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect, unless the prior bequest fails in that particular manner.

Illustrations

A makes a bequest to his wife, but in case she should die in his lifetime, bequeaths to B that, which he had bequeathed to her. A and his wife perish together, under circumstances, which make it impossible to prove that she died before him, the bequest to B does not take effect.

Bequest over, conditional upon happening or not happening of specified uncertain event.

- 131.** (1) A bequest may be made to any person with the condition super-added that, in case a specified uncertain event shall happen, the thing bequeathed shall go to another person or that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.
- (2) In each case the ulterior bequest is subject to the rules contained in sections 120, 121, 122, 123, 124, 125, 126, 127, 129 and 130.

Illustrations

- (i) A sum of money is bequeathed to A, to be paid to him at the age of 18 and if he shall die before he attains that age to B. A takes a vested interest in the legacy, subject to be divested and to go to B in case A dies under 18.

- (ii) An estate is bequeathed to A with a proviso that, if A shall dispute the competency of the testator to make a Will, the estate shall go to B. A disputes the competency of the testator to make a Will. The estate goes to B.
- (iii) A sum of money is bequeathed to A for life and after his death to B, but if B shall then be dead leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be divested, if he dies leaving a son in A's lifetime.
- (iv) A sum of money is bequeathed to A and B and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money and the representative of B takes the other half.
- (v) A bequeaths to B the interest of a fund for life and directs the fund to be divided at her death, equally among her three children or such of them, as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

132. An ulterior bequest of the kind contemplated by Section 131 cannot take effect, unless the condition is strictly fulfilled.

Condition must be strictly fulfilled.

Illustrations

- (i) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, C and D, the legacy shall go to E. D dies. Even if A marries, without the consent of B and C, the gift to E does not take effect.
- (ii) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again, without the consent of B. The bequest to C does not take effect.

133. If the ulterior bequest be not valid, the original bequest is not affected by it.

Original bequest not affected by invalidity of second.

Illustrations

- (i) An estate is bequeathed to A for his life, with condition super-added that, if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate, as if no condition had been inserted in the Will.
- (ii) An estate is bequeathed to A for her life and if she does not desert her husband, to B. A is entitled to the estate during her life, as if no condition had been inserted in the Will.
- (iii) An estate is bequeathed to A for life and if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under Section 106 and A is entitled to the estate during his life.

134. A bequest may be made with the condition super-added that, it shall cease to have effect in case a specified uncertain event shall happen or in case a specified uncertain event shall not happen.

Bequest conditioned that it shall cease to have effect in case of specified uncertain event shall happen or not happen.

Illustrations

- (i) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood. He loses his life-interest in the estate.

- (ii) An estate is bequeathed to A, provided that, if he marries under the age of 25, without the consent of the executors named in the Will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.
- (iii) An estate is bequeathed to A, provided that, if he shall not go to Switzerland within three years, after the testator's death, his interest in the estate shall cease. A does not go to Switzerland, within the time prescribed. His interest in the estate ceases.
- (iv) An estate is bequeathed to A, with a proviso that, if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the Will.
- (v) A fund is bequeathed to A for life and after his death to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

Such condition must not be invalid under section 120.

135. In order, that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event, to which it relates be one which could legally constitute the condition of a bequest, as contemplated by Section 120.

Result of legatee rendering impossible or indefinitely postponing act.

136. Where a bequest is made, with a condition super-added that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person or the bequest shall cease to have effect, but no time is specified for the performance of the act; if the legatee takes any step, which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if, the legatee had died without performing such act.

Illustrations

- (i) A bequest is made to A, with a proviso that, unless he enters the army, the legacy shall go over to B. A enters a religious order and thereby renders it impossible that, he should fulfil the condition. B is entitled to receive the legacy.
- (ii) A bequest is made to A, with a proviso that, it shall cease to have any effect, if he does not marry B's daughter. A marries a stranger and thereby, indefinitely postpones the fulfilment of the conditions. The bequest ceases to have effect.

Performance of condition, precedent or subsequent, within specified time.

137. Where the Will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed or as a condition upon the non-fulfilment of which, the subject-matter of the bequest is to go over to another person or the bequest is to cease to have effect, the act must be performed, within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed, as shall be requisite to make up for the delay caused by such fraud.

Bequests with Directions as to Application or Enjoyment

Direction that fund may be employed in particular manner, following absolute bequest of same to or for benefit of any person.

138. Where a fund is bequeathed absolutely to or for the benefit of any person, but the Will contains a direction that, it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund, as if the Will had contained no such direction.

Illustrations

A sum of money is bequeathed towards purchasing a country residence for A or to purchase an annuity for A or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

139. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee, shall be restricted, so as to secure a specified benefit for the legatee, if that benefit cannot be obtained for the legatee, the fund belongs to him, as if the Will had contained no such direction.

Direction that mode of enjoyment of absolute bequest to be restricted, to secure specified benefit for legatee.

Illustrations

- (i) A bequeaths the residue of his estate, to be divided equally among his daughters and directs that the shares of the daughters, shall be settled upon themselves, respectively for life and be paid to their children, after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.
- (ii) A directs his trustees to raise a sum of money for his daughter, and he then directs that they shall invest the fund and pay the income arising from it to her, during her life and divide the principal among her children, after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

140. Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes and part of those purposes cannot be fulfilled, the fund or so much of it, as has not been exhausted upon the objects, contemplated by the Will, remains a part of the estate of the testator.

Bequest of fund for certain purpose, some of which cannot be fulfilled.

Illustrations

- (i) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life and at his death shall divide the principal among his children. The son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.
- (ii) A bequeaths the residue of his estate, to be divided equally among his daughters, with a direction that they are to have the interest only during their lives and that, at their death, the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

Bequests to an Executor

141. If a legacy is bequeathed to a person, who is named an executor of the Will, he shall not take the legacy, unless he proves the Will or otherwise manifests an intention to act as executor.

Legatee named as executor cannot take the legacy, unless he shows intention to act as executor.

Illustrations

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the Will and dies a few days after the testator, without having proved the Will. A has manifested an intention to act as executor.

Specific Legacies

142. Where a testator bequeaths to any person, a specified part of his estate, which is distinguished from all other parts of his estate, the legacy is said to be specific.

Specified legacy defined.

Illustrations

- (i) A bequeaths to B, –
- “the diamond ring presented to me by C”;
 - “my gold chain”;
 - “a certain bale of wool”;
 - “a certain piece of cloth”;
 - “all my household goods, which shall be in or about my dwelling house in Indore, at time of my death”;
 - “the sum of 10,000 rupees in a certain chest”;
 - “the debt, which B owes me”;
 - “all my bills, bonds and securities belonging to me lying in my lodgings in Ujjain”;
 - “all my furniture in my house in Bhopal”;
 - “all my goods on board, a certain vessel now lying in the river Narmada”;
 - “35,000 rupees, which I have in the hands of C”;
 - “the money due to me on the bond of D”;
 - “my mortgage on the Sagar factory”;
 - “one-half of the money owing to me, on my mortgage of Sagar factory”;
 - “50,000 rupees, being part of a debt due to me from C”;
 - “my capital stock of 1,00,000 rupees in BHEL stock”;
 - “my promissory notes of the Central Government, for 15,000 rupees in their 4 percent loan”;
 - “all such sums of money, as my executors may, after my death, receive in respect of the debt, due to me, from the insolvent firm of R and Company”;
 - “all the wine, which I may have in my cellar, at the time of my death”;
 - “such of my horses, as B may select”;
 - “all my shares in the State Bank of India”;
 - “all my shares in the State Bank of India, which I may possess, at the time of my death”;
 - “all the money which I have in the 5 percent loan of the Central Government”;
 - “all the Government securities I shall be entitled to, at the time of my death”.
- Each of these legacies is specific.
- (ii) A, having Government promissory notes for 1,00,000 rupees, bequeaths to his executors “Government promissory notes for 1,00,000 rupees in trust to sell”, for the benefit of B. The legacy is specific.
- (iii) A, having estate at Ratlam and also in other places, bequeaths to B, all his estate at Ratlam. The legacy is specific.

- (iv) A bequeaths a sum of money, –
 to buy a house in Indore for B;
 to buy an estate in Bhopal for B;
 to buy a diamond ring for B;
 to buy a horse for B;
 to be invested in shares in the State Bank of India for B;
 to be invested in Government securities for B.
- A bequeaths to B, –
 “a diamond ring”;
 “a horse”;
 “10,000 rupees worth of Government securities”;
 “an annuity of 25,000 rupees”;
 “20,000 rupees to be paid in cash”;
 “so much money, as will produce 50,000 rupees four percent. Government securities.”

These bequests are not specific.

- (v) A, having estate in Switzerland and estate in India, bequeaths a legacy to B and directs that it shall be paid out of the estate, which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of estate, which he may leave in Switzerland.

No one of these legacies is specific.

143. Where a certain sum is bequeathed, the legacy is not specific merely because the stock, funds or securities in which it is invested are described in the Will.

Bequest of certain sum, where stocks etc. in which invested are described.

Illustrations

- (i) A bequeaths to B, –
 “1,00,000 rupees of my funded estate”;
 “1,00,000 rupees of my estate, now invested in shares of Tata Motors Ltd.”;
 “1,00,000 rupees, at present secured by mortgage of Pithampur factory”.

No one of these legacies is specific.

144. Where a bequest is made in general terms of a certain amount of any kind of stock, the legacy is not specific, merely because the testator was, at the date of his Will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Bequest of stock, where testator had, at date of Will, equal or greater amount of stock of same kind.

Illustrations

A bequeaths to B, 50,000 rupees five percent Government securities. A had at the date of the Will five percent Government securities, for 50,000 rupees. The legacy is not specific.

Bequest of money where not payable, until part of testator's estate disposed of in certain way.

145. A money legacy is not specific, merely because the Will directs its payment to be postponed, until some part of the estate of the testator has been reduced to a certain form or remitted to a certain place.

Illustrations

A bequeaths to B, 1,00,000 rupees and directs that, this legacy shall be paid as soon as A's estate in India, shall be realised in Finland. The legacy is not specific.

When enumerated articles not deemed specifically bequeathed.

146. Where a Will contains a bequest of the residue of the testator's estate, along with an enumeration of some items of estate, not previously bequeathed, the articles enumerated, shall not be deemed to be specifically bequeathed.

Retention in form, of specific bequest to several persons in succession.

147. Where estate is specifically bequeathed, to two or more persons in succession, it shall be retained in the form, in which the testator left it, although it may be of such a nature that, its value is continually decreasing.

Illustrations

(i) A, having lease of a house for a term of years, fifteen of which were unexpired, at the time of his death, has bequeathed the lease to B, for his life and after B's death to C. B is to enjoy the estate as A left it, although, if B lives for fifteen years, C can take nothing under the bequest.

(ii) A, having an annuity during the life of B, bequeaths it to C, for his life and after C's death to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

Sale and investment of proceeds of estate bequeathed to two or more persons in succession.

148. Where estate comprised in a bequest, to two or more persons in succession is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold and the proceeds of the sale shall be invested in such securities, as the High Court may by any general rule authorise or direct and the fund thus, constituted shall be enjoyed by the successive legatees, according to the terms of the Will.

Illustrations

A, having a lease for a term of years, bequeaths all his estate to B for life, and, after B's death to C. The lease must be sold, the proceeds invested as stated in this section and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

149. If there is a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

Demonstrative Legacies

150. Where a testator bequeaths a certain sum of money or a certain quantity of any other commodity and refers to a particular fund or stock so as to constitute the same primary fund or stock out of which, payment is to be made, the legacy is said to be demonstrative.

Demonstrative legacy defined.

Explanation.- The distinction between a specific legacy and a demonstrative legacy consists in this, that, —

- (i) where specified estate is given to the legatee, the legacy is specific;
- (ii) where the legacy is directed to be paid out of specified estate, it is demonstrative.

Illustrations

- (i) A bequeaths to B 1,00,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,00,000 rupees, to be paid out of the debt, due to him from W. The legacy to B is specific, the legacy to C is demonstrative.
- (ii) A bequeaths to B,—
 - “ten bushels of the corn, which shall grow in my field of Rewa Farmhouse”;
 - “800 boxes of blue pens, which shall be made at my factory of Jabalpur”;
 - “10,000 rupees out of my five percent promissory notes of the Central Government”;
 - An annuity of 5,000 rupees “from my funded estate”;
 - “10,000 rupees out of the sum of 20,000, rupees due to me by C”;
 - An annuity and directs it to be paid “out of the rents arising from my estate at Neemuch”.
- (iii) A bequeaths to B, —
 - “10,000 rupees out of my estate at Neemuch” or charges it on his estate at Neemuch;
 - “10,000 rupees, being my share of the capital embarked in a certain business”.

Each of these bequests is demonstrative.

Order of
payment when
legacy directed
to be paid out
of fund,
subject to
specific legacy.

151. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee and the demonstrative legacy shall be paid out of the residue of the fund and so far as the residue shall be deficient, out of the general assets of the testator.

Illustrations

A bequeaths to B 10,000 rupees, being part of a debt, due to him from W. He also bequeaths to C 10,000 rupees to be paid out of the debt, due to him from W. The debt due to A, from W is only 15,000 rupees; of these 15,000 rupees, 10,000 rupees belong to B and 5,000 rupees are to be paid to C. C is also to receive 5,000 rupees out of the general assets of the testator.

Ademption of Legacies

152. If anything, which has been specifically bequeathed, does not belong to the testator, at the time of his death or has been converted into estate of a different kind, the legacy is adeemed, that is, it cannot take effect, by reason of the subject-matter having been withdrawn from the operation of the Will.

Illustrations

- (i) A bequeaths to B, –
 - “the diamond ring presented to me by C”;
 - “my gold chain”;
 - “a certain bale of wool”;
 - “a certain piece of cloth”;
 - “all my household goods, which shall be in or about my dwelling-house in Indore, at the time of my death.”

A in his life time, –

 - sells or gives away the ring;
 - converts the chain into a cup;
 - converts the wool into cloth;
 - makes the cloth into a garment;
 - takes another house into which, he removes all his goods.

Each of these legacies is adeemed.
- (ii) A bequeaths to B, –
 - “the sum of 10,000 rupees, in a certain chest”;
 - “all the horses in my stable”.

At the death of A, no money is found in the chest and no horses in the stable. The legacies are adeemed.
- (iii) A bequeaths to B, certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea and A is drowned. The legacy is adeemed.

153. A demonstrative legacy is not adeemed by reason that, the estate on which it is charged by the Will does not exist, at the time of the death of the testator or has been converted into estate of a different kind, but it shall in such case be paid out of the general assets of the testator.

**Non-
ademption of
demonstrative
legacy.**

154. Where the thing specifically bequeathed is the right to receive something of value from a third party and the testator himself receives it, the bequest is adeemed.

**Ademption of
specific
bequest of
right to
receive
something
from third
party.**

Illustrations

(i) A bequeaths to B, –

“the debt which C owes me”;

“20,000 rupees, which I have in the hands of D”;

“the money, due to me on the bond of E”;

“my mortgage on the Pithampur factory”.

All these debts are extinguished in A's lifetime, some with and some without his consent. All the legacies are adeemed.

(ii) A bequeaths to B his interest in certain policies of life assurance. A in his lifetime receives the amount of the policies. The legacy is adeemed.

155. The receipt by the testator of a part of an entire thing specifically bequeathed, shall operate as an ademption of the legacy, to the extent of the sum so received.

**Ademption *pro tanto* by
testator's
receipt of part
of entire thing
specifically
bequeathed.**

Illustrations

A bequeaths to B “the debt due to me by C”. The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

156. If a portion of an entire fund or stock is specifically bequeathed, the receipt by the testator of a portion of the fund or stock, shall operate as an ademption only, to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

**Ademption *pro tanto* by
testator's
receipt of
portion of
entire fund, of
which portion
has been
specifically
bequeathed.**

Illustrations

A bequeaths to B “the debt due to me by C”. The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

157. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee, then, if the testator receives a portion of that fund and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first and the residue (if any) of the fund shall be applied, so far as it will extend in payment of the demonstrative legacy and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

**Ademption *pro tanto* by
testator's
receipt of
portion of
entire fund, of
which portion
has been
specifically
bequeathed.**

Illustration

A bequeaths to B 10,000 rupees, part of the debt of 20,000 rupees due to him from W. He also bequeaths to C 10,000 rupees, to be paid out of the debt due to him from W. A afterwards receives 5,000 rupees, part of that debt and dies leaving only 15,000 rupees, due to him from W. Of these 15,000 rupees, 10,000 rupees belong to B and 5,000 rupees are to be paid to C. C is also to receive 5,000 rupees out of the general assets of the testator.

Ademption, where stock, specifically bequeathed does not exist at testator's death.

- 158.** Where stock, which has been specifically bequeathed, does not exist at the testator's death, the legacy is adeemed.

Illustration

A bequeaths to B, –

“my capital stock of 10,000 rupees in BHEL Stock”;

“my promissory notes of the Central Government for 10,000 rupees in their 4 percent loan.”

A sells the stock and the notes. The legacies are adeemed.

Ademption pro tanto, where stock, specifically bequeathed, exists in part, only at testator's death.

- 159.** Where stock, which has been specifically bequeathed exists only in part at the testator's death, the legacy is adeemed, so far as regards that part of the stock, which has ceased to exist.

Illustrations

A bequeaths to B his 10,000 rupees in the 5.5 percent loan of the Central Government. A sells one-half of his 10,000 rupees in the loan in question. One-half of the legacy is adeemed.

- 160.** A specific bequest of goods under a description connecting them with a certain place is not adeemed by reason, that they have been removed from such place from any temporary cause or by fraud or without the knowledge or sanction of the testator.

Illustration

(i) A bequeaths to B “all my household goods, which shall be in or about my dwelling-house in Amarkantak at the time of my death”. The goods are removed from the house to save them from fire. A dies before they are brought back.

(ii) A bequeaths to B “all my household goods, which shall be in or about my dwelling-house in Amarkantak at the time of my death”. During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

When removal of thing bequeathed does not constitute ademption.

- 161.** The removal of the thing bequeathed from the place, in which it is stated in the Will to be situated does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations

- (i) A bequeaths to B "all the bills, bonds and other securities for money belonging to me now lying in my lodgings in Pachmarhi". At the time of his death these effects had been removed from his lodgings in Pachmarhi.
- (ii) A bequeaths to B all his furniture then in his house in Mandla. The testator has a house at Mandla and another at Panna, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death the furniture is in the house at Panna.
- (iii) A bequeaths to B all his goods on board, a certain vessel then lying in the river Narmada. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

- 162.** Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity, which may be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption, but if he mixes it up with the general mass of his estate, the legacy is adeemed.

Illustration

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C and sets it apart from the general mass of his estate. The legacy is not adeemed.

- 163.** Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator's death and the change takes place by operation of law or in the course of execution of the provisions of any legal instrument, under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Illustrations

- (i) A bequeaths to B "all the money, which I have in the 5.5 percent loan of the Central Government". The securities for the 5.5 percent loan are converted during A's lifetime into 5 percent stock.
- (ii) A bequeaths to B the sum of 20,000 rupees invested in Government securities in the names of trustees for A. The sum of 20,000 is transferred by the trustees into A's own name.

Neither of these legacies has been adeemed.

- 164.** Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator's death and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Illustration

A bequeaths to B "all my 3 percent Government securities". The Government securities are, without A's knowledge, sold by his agent and the proceeds converted into BHEL Stock. This legacy is not adeemed.

When thing bequeathed is a valuable to be received by testator from third person and testator himself or his representative receives it.

Change by operation of law of subject of specific bequest between date of Will and testator's death.

Change of subject without testator's knowledge.

Stock specifically bequeathed lent to third party on condition, that it be replaced.

165. Where stock, which has been specifically bequeathed is lent to a third party on condition, that it shall be replaced and it is replaced accordingly, the legacy is not adeemed.

Stock specifically bequeathed sold but replaced, and belonging to testator at his death.

166. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

Non-liability of executor to exonerate specific legatees.

Payment of Liabilities in Respect of the Subject of a Bequest

167. (1) Where estate specifically bequeathed is subject at the death of the testator to any pledge, lien or incumbrance created by the testator himself or by any person, under whom he claims, then, unless a contrary intention appears by the Will, the legatee, if he accepts the bequest, shall accept it, subject to such pledge or incumbrance and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

(2) A contrary intention shall not be inferred from any direction, which the Will may contain for the payment of the testator's debts generally.

Explanation.- A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance, as is contemplated by this section.

Illustrations

- (i) A bequeaths to B the diamond ring given to him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.
- (ii) A bequeaths to B an estate which at A's death is subject to a mortgage for 10,000 rupees and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion of testator's title to things bequeathed to be at the cost of his estate.

168. Where anything is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustrations

- (i) A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths to B and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.
- (ii) A, having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down and the other half secured by mortgage of the land, bequeaths it to B and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

169. Where there is a bequest of any interest in immovable estate, in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them, as the case may be, up to the day of his death.

Exoneration of legatee's immovable estate, for which land revenue or rent payable periodically.

Illustration

A bequeaths to B a house, in respect of which 36,500 rupees are payable annually by way of rent. A pays his rent at the usual time and dies 25 days after. A's estate will make good 2,500 rupees in respect of the rent.

170. In the absence of any direction in the Will, where there is a specific bequest of stock in a joint-stock company, if any call or other payment is due from the testator at the time of his death in respect of the stock, such call or payment shall, as between the testator's estate and the legatee, be borne by the estate, but, if any call or other payment becomes due in respect of such stock after the testator's death, the same shall, as between the testator's estate and the legatee, be borne by the legatee, if he accepts the bequest.

Exoneration of specific legatee's stock in joint stock company.

Illustrations

- (i) A bequeaths to B his shares in a certain company. At A's death there was due from him the sum of 100 rupees in respect of each share, being the amount of a call, which had been duly made and the sum of five rupees in respect of each share, being the amount of interest, which had accrued due in respect of the call. These payments must be borne by A's estate.
- (ii) A has agreed to take 50 shares in an intended joint-stock company and has contracted to pay up 100 rupees in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments, which were necessary to complete A's title.
- (iii) A bequeaths to B his shares in a certain company. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.
- (iv) A bequeaths to B his shares in a joint-stock company. B accepts the bequest. Afterwards the affairs of the company are wound up and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.
- (v) A is the owner of ten shares in a company. At a meeting held during his lifetime a call is made of fifty rupees per share, payable by three instalments. A bequeaths his shares to B and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment and without having paid the first instalment. A's estate must pay the first instalment and B, if he accepts the legacy, must pay the remaining instalments.

Bequests of Things Described in General Terms

Bequest of thing described in general terms.

171. If there is a bequest of something described in general terms, the executor must purchase for the legatee, what may reasonably be considered to answer the description.

Illustrations

- (i) A bequeaths to B a motor vehicle or a diamond ring. The executor must provide the legatee with such articles, if the state of the assets will allow it.
- (ii) A bequeaths to B "my motor cars". A had no motor car at the time of his death. The legacy fails.

Bequests of the Interest or Produce of a Fund

Bequest of interest or produce of fund.

172. Where the interest or produce of a fund is bequeathed to any person and the Will affords no indication of an intention, that the enjoyment of the bequest should be of limited duration, the principal, as well as the interest, shall belong to the legatee.

Illustrations

- (i) A bequeaths to B the interest of his 5 per cent promissory notes of the Central Government. There is no other clause in the Will affecting those securities. B is entitled to A's 5 per cent promissory notes of the Central Government.
- (ii) A bequeaths the interest of his 5.5 per cent promissory notes of the Central Government to B for his life and after his death to C. B is entitled to the interest of the notes during his life and C is entitled to the notes upon B's death.
- (iii) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

Bequests of Annuities

Annuity created by Will payable for life only, unless contrary intention appears by Will.

173. Where an annuity is created by Will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the Will, notwithstanding that the annuity is directed to be paid out of the estate generally or that a sum of money is bequeathed to be invested in the purchase of it.

Illustrations

- (i) A bequeaths to B 5,000 rupees a year. B is entitled during his life to receive the annual sum of 5,000 rupees.
- (ii) A bequeaths to B the sum of 5,000 rupees monthly. B is entitled during his life to receive the sum of 5,000 rupees every month.
- (iii) A bequeaths an annuity of 5,000 rupees to B for life and on B's death to C. B is entitled to an annuity of 5,000 rupees during his life. C, if he survives B, is entitled to an annuity of 5,000 rupees from B's death, until his own death.

174. Where the Will directs that an annuity shall be provided for any person out of the proceeds of estate or out of estate generally or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death, the legacy vests in interest in the legatee and he is entitled at his option to have an annuity purchased for him or to receive the money appropriated for that purpose by the Will.

Period of vesting, where Will directs that annuity be provided out of proceeds of estate or out of estate generally or where money bequeathed to be invested in purchase of annuity.

Illustrations

(i) A by his Will directs that his executors shall, out of his estate purchase an annuity of 10,000 rupees for B. B is entitled at his option to have an annuity of 10,000 rupees for his life, purchased for him or to receive such a sum, as will be sufficient for the purchase of such an annuity.

(ii) A bequeaths a fund to B for his life and directs that after B's death, it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death, the fund belongs to the representative of C.

175. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the Will, the annuity shall abate in the same proportion, as the other pecuniary legacies given by the Will.

Abatement of annuity.

176. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee and if necessary, the capital of the testator's estate shall be applied for that purpose.

Where gift of annuity and residuary gift, whole annuity to be first satisfied.

Legacies to Creditors and Portioners

177. Where a debtor bequeaths a legacy to his creditor and it does not appear from the Will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy, as well as to the amount of the debt.

Creditor *prima facie* entitled to legacy as well as debt.

178. Where a parent, who is under obligation by contract to provide a portion for a child fails to do so and afterwards bequeaths a legacy to the child and does not intimate by his Will, that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy, as well as the portion.

Child *prima facie* entitled to legacy as well as portion.

Illustrations

A, by articles entered into in contemplation of his marriage with B covenanted, that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

No
ademption by
subsequent
provision for
legatee.

179. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

Illustrations

- (i) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.
- (ii) A bequeaths 40,000 rupees to B, his orphan niece, whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

Election

Circumstances
in which
election takes
place.

180. Where a person, by his Will, professes to dispose of something, which he has no right to dispose of, the person, to whom the thing belongs, shall elect either to confirm such disposition or to dissent from it and in the latter case, he shall give up any benefits, which may have been provided for him by the Will.

Devolution of
interest
relinquished
by owner.

181. An interest relinquished in the circumstances stated in Section 180 shall devolve, as if it had not been disposed of by the Will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the Will.

Testator's
belief, as to
his ownership
immaterial.

182. The provisions of Sections 180 and 181 apply whether the testator does or does not believe that which he professes to dispose of by his Will to be his own.

Illustrations

- (i) The farm of Narmadapuram was the estate of C. A bequeathed it to B, giving a legacy of 1,00,000 rupees to C. C has elected to retain his farm of Narmadapuram, which is worth 80,000 rupees. C forfeits his legacy of 1,00,000 rupees, of which 80,000 rupees goes to B and the remaining 20,000 rupees falls into the residuary bequest or devolves according to the rules of intestate succession, as the case maybe.
- (ii) A bequeaths an estate to B, in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel or to lose the estate.
- (iii) A bequeaths to B 1,00,000 rupees and to C an estate, which will, under a settlement, belong to B, if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate or to lose the legacy.
- (iv) A, a person of the age of 18, domiciled in India in Madhya Pradesh, but owning real estate in Finland, to which C is heir at law, bequeaths a legacy to C and, subject thereto, devises and bequeaths to B "all my estate whatsoever and wheresoever" and dies under 21. The real estate in Finland does not pass by the Will. C may claim his legacy without giving up the real estate in Finland.

183. A bequest for a person's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Bequest for person's benefit how regarded for purpose of election.

Illustrations

The farm of Pachmarhi being the estate of B, A bequeathed it to C and bequeathed another farm called Narmada farmhouse to his own executors with a direction, that it should be sold and the proceeds applied in payment of B's debts. B must elect whether he will abide by the Will or keep his farm of Pachmarhi in opposition to it.

184. A person taking no benefit directly under a Will, but deriving a benefit under it indirectly, is not put to his election.

Person deriving benefit indirectly not put to election.

Illustrations

The lands of Ujjain are settled upon C for life and after his death upon D, his only child. A bequeaths the lands of Ujjain to B and 1,00,000 rupees to C. C dies intestate shortly after the testator and without having made any election. D takes out administration to C and as administrator elects on behalf of C's estate to take under the Will. In that capacity he receives the legacy of 1,00,000 rupees and accounts to B for the rents of the lands of Ujjain, which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Ujjain in opposition to the Will.

185. A person, who in his individual capacity takes a benefit under a Will may, in another character, elect to take in opposition to the Will.

Person taking in individual capacity under Will may in other character elect to take in opposition.

Illustrations

The estate of Vidisha is settled upon A for life and after his death, upon B. A leaves the estate of Vidisha to D and 2,00,000 rupees to B and 1,00,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B and as administrator elects to keep the estate of Vidisha in opposition to the Will and to relinquish the legacy of 2,00,000 rupees. C may do this and yet claim his legacy of 1,00,000 rupees under the Will.

186. Notwithstanding anything contained in sections 180 to 185, where a particular gift is expressed in the Will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the Will, then, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the Will.

Exception to provisions of preceding six sections.

Illustrations

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Indore during her life. A by his Will bequeaths to his wife an annuity of 2,00,000 rupees during her life, in lieu of her interest in the estate of Indore, which estate he bequeaths to his son. He also gives his wife a legacy of 10,00,000 rupees. The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity but not the legacy of 10,00,000 rupees.

When acceptance of benefit given by Will constitutes election to take under Will.

187. Acceptance of a benefit given by a Will constitutes an election by the legatee to take under the Will, if he had knowledge of his right to elect and of those circumstances, which would influence the judgment of a reasonable person in making an election or if he waives inquiry into the circumstances.

Illustrations

- (i) A is owner of an estate called Kshipra farm and has a life interest in another estate called Betwa farm, to which, upon his death his son B will be absolutely entitled. The Will of A gives the estate of Kshipra farm to B and the estate of Betwa farm to C. B, in ignorance of his own right to the estate of Betwa farm, allows C to take possession of it and enters into possession of the estate of Kshipra farm. B has not confirmed the bequest of Betwa farm to C.
- (ii) B, the eldest son of A, is the possessor of an estate called Lily Farmhouse. A bequeaths Lily Farm house to C and to B the residue of A's estate. B, having been informed by A's executors, that the residue will amount to 5,00,000 rupees, allows C to take possession of Lily Farmhouse. He afterwards discovers that the residue does not amount to more than 50,000 rupees. B has not confirmed the bequest of the estate of Lily Farm house to C.

Circumstances, in which knowledge or waiver is presumed or inferred.

- 188.** (1) Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed, if the legatee has enjoyed for two years the benefits provided for him by the Will, without doing any act to express dissent.
- (2) Such knowledge or waiver of inquiry may be inferred from any act of the legatee, which renders it impossible to place the persons interested in the subject-matter of the bequest, in the same condition, as if such act had not been done.

Illustrations

A bequeaths to B an estate, to which C is entitled and to C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the bequest of the estate to B.

When testator's representatives may call upon legatee to elect.

189. If the legatee does not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the Will, the representatives shall, upon the expiration of that period, require him to make his election and if he does not comply with such requisition within a reasonable time, after he has received it, he shall be deemed to have elected to confirm the Will.

Postponement of election in case of disability.

190. In case of disability, the election shall be postponed, until the disability ceases or until the election is made by some competent authority.

Gifts in Contemplation of Death

191. (1) A person may dispose, by gift made in contemplation of death, of any movable estate, which he could dispose of by Will.
- (2) A gift is said to be made in contemplation of death, where a person, who is ill and expects to die shortly of his illness, delivers, to another the possession of any movable estate to keep, as a gift, in case the donor shall die of that illness.
- (3) Such a gift may be resumed by the giver; and shall not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

Estate transferable by gift made in contemplation of death.

Illustrations

- (i) A, being ill and in expectation of death, delivers to B, to be retained by him in case of A's death –

a watch;

a bond granted by C to A;

a bank-note;

a promissory note of the Central Government endorsed in blank;

a bill of exchange endorsed in blank;

certain mortgage-deeds.

A dies of the illness, during which he delivered these articles.

B is entitled to, –

the watch;

the debt secured by C's bond;

the bank-note;

the promissory note of the Central Government;

the bill of exchange;

the money secured by the mortgage-deeds.

- (ii) A, being ill and in expectation of death, delivers to B the key of a trunk or the key of a warehouse, in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk or over the deposited goods and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents or to A's goods of bulk in the warehouse.
- (iii) A, being ill and in expectation of death, puts aside certain articles in separate parcels and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness, during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

CHAPTER III

PROTECTION OF ESTATE OF DECEASED

Person claiming right by succession to estate of deceased may apply for relief against wrongful possession.

192. (1) If any person dies leaving estate, movable or immovable, any person claiming a right by succession thereto or to any portion thereof, may make application to the District Judge of the district, where any part of the estate is found or situate, for relief, either after actual possession has been taken by another person or when forcible means of seizing possession are apprehended.

(2) Any guardian, agent, relative or near friends, may, in the event of any minor or any disqualified or absent person, being entitled by succession to such estate as aforesaid, make the like application for relief.

Inquiry made by Judge.

193. The District Judge, to whom such application is made shall, in the first place, examine the applicant on oath and may make such further inquiry, if any, as he thinks necessary, as to whether there is sufficient ground for believing that the party in possession or taking forcible means for seizing possession has no lawful title and that the applicant or the person, on whose behalf he applies, is really entitled and is likely to be materially prejudiced if left to the ordinary remedy of a suit and that the application is made bonafide.

Procedure.

194. If the District Judge is satisfied that there is sufficient ground for believing as aforesaid but not otherwise, he shall summon the party complained of and give notice of vacant or disturbed possession by publication and after the expiration of a reasonable time, shall determine summarily the right to possession (subject to a suit as hereinafter provided) and shall deliver possession accordingly:

Provided that the Judge shall have the power to appoint an officer, who shall take an inventory of effects and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the inquiry necessary for summoning the party complained of or not.

Appointment of curator pending determination of proceedings.

195. If it further appears upon such inquiry as aforesaid, that danger is to be apprehended of the misappropriation or waste of the estate before the summary proceeding can be determined and that the delay in obtaining security from the party in possession or the insufficiency thereof is likely to expose the party out of possession to considerable risk, provided he is the lawful owner, the District Judge may appoint one or more curators, whose authority shall continue according to the terms of his or their respective appointment and in no case beyond the determination of the summary proceeding and the confirmation or delivery of possession in the consequence thereof:

Provided that, in the case of land, the Judge may delegate to the Collector or to any officer subordinate to the Collector, the powers of a curator:

Provided further that every appointment of a curator in respect of any estate, shall be duly published.

- 196.** The District Judge may authorise the curator to take possession of the estate either generally or until security is given by the party in possession or until inventories of the estate have been made or for any other purpose necessary for securing the estate from misappropriation or waste by the party in possession:
- Provided that it shall be in the discretion of the Judge to allow the party in possession to continue in such possession on giving security or not and any continuance in possession shall be subject to such orders, as the Judge may issue touching inventories or the securing of deeds or other effects.
- 197.** (1) Where a certificate has been granted under Chapter-VI of this Part, or a grant of probate or letters of administration has been made, a curator appointed under this Chapter shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator.
- (2) All persons, who have paid debts or rents to a curator authorised by a court to receive them shall be indemnified and the curator shall be responsible for the payment thereof to the person, who has obtained the certificate, probate or letters of administration, as the case may be.
- 198.** (1) The District Judge shall take from the curator security for the faithful discharge of his trust and for rendering, satisfactory accounts of the same, as hereinafter provided and may authorise him to receive out of the estate, such remuneration, in no case exceeding five percent on the movable estate and on the annual profits of the immovable estate, as the District Judge thinks reasonable.
- (2) All surplus money realized by the curator shall be paid into court and invested in public securities for the benefit of the persons entitled thereto, upon adjudication of the summary proceeding.
- (3) Security shall be required from the curator with all reasonable despatch and where it is practicable, shall be taken generally to answer all cases, for which the person may be afterwards appointed curator, but no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.
- 199.** (1) Where the estate of the deceased person consists wholly or in part of land paying revenue to Government, in all matters regarding the propriety of summoning the party in possession, of appointing a curator or of nominating individuals to that appointment, the District Judge shall demand a report from the Collector and the Collector shall thereupon furnish the same:
- Provided that in cases of urgency the Judge may proceed, in the first instance, without such report.
- (2) The Judge shall not be obliged to act in conformity with any such report.
- 200.** The curator shall be subject to all orders of the District Judge regarding the institution or the defence of suits and all suits may be instituted or defended in the name of the curator on behalf of the estate:

**Powers
conferrable on
curator.**

**Prohibition of
exercise of
certain powers
by curator.**

**Curator to
give security
and may
receive
remuneration.**

**Report from
Collector,
where estate
includes
revenue
paying land.**

**Institution and
defence of
suits.**

		Provided that an express authority shall be requisite in the order of the curator's appointment for the collection of debts or rents; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof.
Allowances to apparent owners pending custody by curator.	201.	Pending the custody of the estate by the curator, the District Judge may make such allowances to parties having a prima facie right thereto, as upon a summary investigation of the right and circumstances of the parties interested he considers necessary and may, at his discretion, take security for the repayment thereof with interest, in the event of the party being found, upon the adjudication of the summary proceeding, not to be entitled thereto.
Accounts to be filed by curator.	202.	The curator shall file monthly accounts in abstract and shall, on the expiry of each period of three months, if his administration lasts so long and upon giving up the possession of the estate, file a detailed account of his administration to the satisfaction of the District Judge.
Inspection of accounts and right of interested party to keep duplicate.	203. (1)	The accounts of the curator shall be open to the inspection of all parties interested and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by the curator.
	(2)	If it is found that the accounts of the curator are in arrear or that they are erroneous or incomplete or if the curator does not produce them whenever he is ordered to do so by the District Judge, he shall be punished with fine not exceeding one thousand rupees for every such default.
Bar to appointment of second curator for same estate.	204.	If the Judge of any district has appointed a curator in respect of the whole of the estate of a deceased person, such appointment shall preclude the Judge of any other district within the State from appointing any other curator, but the appointment of a curator in respect of a portion of the estate of the deceased shall not preclude the appointment within the State, of another curator, in respect of the residue or any portion thereof: Provided that no Judge shall appoint curator or entertain a summary proceeding in respect of estate which is the subject of a summary proceeding previously instituted under this Chapter before another Judge: Provided further that if two or more curators are appointed by different Judges for several parts of an estate, the High Court may make such order, as it thinks fit, for the appointment of one curator of the whole estate.
Limitation of time for application for curator.	205.	An application under this Chapter to the District Judge must be made within six months of the death of the proprietor, whose estate is claimed by right in succession.
Bar to enforcement of the Chapter against public settlement or legal directions by deceased.	206.	Nothing in this Chapter shall be deemed to authorise the contravention of any public act of settlement or of any legal directions given by a deceased proprietor of any estate for the possession of his estate after his death in the event of minority or otherwise and in every such case, as soon as the Judge having jurisdiction over the estate of a deceased person is satisfied of the existence of such directions, he shall give effect thereto.

- | | | |
|------|--|---|
| 207. | Nothing contained in this Chapter shall be any impediment to the bringing of a suit, either by the party, whose application may have been rejected before or after the summoning of the party in possession or by the party, who may have been evicted from the possession under this Chapter. | Saving of right to bring suit. |
| 208. | The decision of a District Judge in a summary proceeding under this Chapter shall have no other effect than that of settling the actual possession but for this purpose it shall be final and shall not be subject to any appeal or review. | Effect of decision of summary proceeding. |
| 209. | The State Government may appoint public curators for any district or number of districts and the District Judge, having jurisdiction, shall nominate such public curators in all cases, where the choice of a curator is left discretionary with him under this Chapter. | Appointment of public curators. |

CHAPTER IV

REPRESENTATIVE TITLE TO ESTATE OF DECEASED ON SUCCESSION

- | | | |
|----------|--|---|
| 210. | The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes and all the estate of the deceased person vests in him as such. | Character and estate of curator or administrator as such. |
| 211. (1) | No court shall, – | Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons. |
| | (a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof; or | |
| | (b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming of,– | |
| | (i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased; or | |
| | (ii) a succession certificate granted under Chapter VI of this Part and having the debt specified therein. | |
| | (2) The word “debt” in sub-section (1) includes any debt, except rent, revenue or profits payable in respect of land used for agricultural purposes. | |
| 212. (1) | A grant of probate or letters of administration in respect of an estate shall be deemed to supersede any certificate previously granted under Chapter-IV of this Part, in respect of any debts or securities included in the estate. | Effect on certificate of subsequent probate or letters of administration. |

- (2) When, at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of any such certificate regarding any such debt or security is pending, the person, to whom the grant is made shall, on applying to the court, in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding:

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

Grantee of probate or administration alone to sue etc. until same revoked.

213. After any grant of probate or letters of administration, no other than the person, to whom the same may have been granted shall have power to sue or prosecute any suit or otherwise act as representative of the deceased, throughout the State, in which the same may have been granted, until such probate or letters of administration has or have been recalled or revoked.

CHAPTER V

PROBATE, LETTERS OF ADMINISTRATION AND ADMINISTRATION OF ASSETS OF DECEASED

Application of this Chapter.

214. Save as otherwise provided by this Part or by any other law for the time being in force, all grants of probate and letters of administration with the Will annexed and the administration of the assets of the deceased in cases of intestate succession shall be made or carried out, as the case may be, in accordance with the provisions of this Chapter.

Grant of Probate and Letters of Administration

To whom administration may be granted.

215. (1) If the deceased has died intestate, administration of his estate may be granted to any person who, according to the provisions of Chapter-1 of this Part, would be entitled to the whole or any part of such deceased's estate.
- (2) When several such persons apply for such administration, it shall be in the discretion of the court to grant it to any one or more of them.
- (3) When no such person applies, it may be granted to a creditor of the deceased.

Effect of letters of administration.

216. Letters of administration entitle the administrator to all rights belonging to the intestate, as effectually as, if the administration had been granted at the moment after his death.

Acts not validated by administration.

217. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Probate only to appointed executor.

218. (1) Probate shall be granted only to an executor appointed by the Will.
- (2) The appointment may be expressed or by necessary implication.

Illustrations

- (i) A wills that C be his executor if B will not. B is appointed executor by implication.
- (ii) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law C and adds "but should the within-named C be not living I do constitute and appoint B my whole and sole executrix". C is appointed executrix by implication.
- (iii) A appoints several persons executors of his Will and codicils and his nephew residuary legatee and in another codicil are these words - "I appoint my nephew my residuary legatee to discharge all lawful demands against my Will and codicils signed of different dates". The nephew is appointed an executor by implication.

219. Probate cannot be granted to any person, who is a minor or is of unsound mind, nor to any association of individuals, unless it is a company, which satisfies the conditions prescribed by rules to be made, by notification in the Official Gazette by the State Government in this behalf.

Persons to whom probate cannot be granted.

220. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Grant of probate to several executors simultaneously or at different times.

Illustration

A is an executor of B's Will by express appointment and C, an executor of it, by implication. Probate may be granted to A and C at the same time or to A first and then to C or to C first and then to A.

221. (1) If a codicil is discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it, in no way, repeals the appointment of executors made by the Will.

Separate probate of codicil discovered after grant of probate.

(2) If different executors are appointed by the codicil, the probate of the Will shall be revoked and a new probate granted of the Will and the codicil together.

222. When probate has been granted to several executors and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Accrual of representation to surviving executor.

Effect of probate.

223. Probate of a Will, when granted, establishes the Will from the death of the testator and renders valid all intermediate acts of the executor, as such.

224. When a Will has been proved and deposited in a court of competent jurisdiction situated beyond the limits of the State, whether within or beyond the limits of India, and a properly authenticated copy of the Will is produced, letters of administration may be granted with a copy of such copy annexed.

Administration with copy annexed, of authenticated copy of Will proved abroad.

225. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship:

Grant of administration, where executor has not renounced.

- Provided that when one or more of several executors have proved a Will, the court may, on the death of the survivor of those, who have proved, grant letters of administration, without citing those, who have not proved.
- Form and effect of renunciation of executorship.** **226.** The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing and when made, shall preclude him from ever thereafter applying for probate of the Will appointing him executor.
- Procedure, where executor renounces or fails to accept within time limited.** **227.** If an executor renounces or fails to accept an executorship within the time limited for the acceptance or refusal thereof, the Will may be proved and letters of administration, with a copy of the Will annexed, may be granted to the person, who would be entitled to administration in case of intestacy.
- Grant of administration to universal or residuary legatees.** **228.** When,-
 (1) the deceased has made a Will, but has not appointed an executor, or
 (2) the deceased has appointed an executor, who is legally incapable or refuses to act or who has died before the testator or before he has proved the Will, or
 (3) the executor dies after having proved the Will, but before he has administered all the estate of the deceased,
 a universal or a residuary legatee may be admitted to prove the Will and letters of administration, with the Will annexed, may be granted to him of the whole estate or of so much thereof, as may be unadministered.
- Right to administration of representative of deceased residuary legatee.** **229.** When a residuary legatee, who has a beneficial interest, survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the Will annexed, as such residuary legatee.
- Grant of administration, where no curator, nor residuary legatee, nor representative of such legatee.** **230.** When there is no executor and no residuary legatee or representative of a residuary legatee or he declines or is incapable to act or cannot be found, the person or persons, who would be entitled to the administration of the estate of the deceased if he had died intestate or any other legatee having a beneficial interest or a creditor, may be admitted to prove the Will and letters of administration may be granted to him or them accordingly.
- Citation before grant of administration to legatee other than universal or residuary.** **231.** Letters of administration with the Will annexed shall not be granted to any legatee other than a universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

- | | | |
|------|--|---|
| 232. | Letters of administration cannot be granted to any person, who is a minor or is of unsound mind, nor to any association of individuals, unless it is a company, which satisfies the conditions prescribed by rules to be made by notification in the Official Gazette, by the State Government in this behalf. | To whom administration may not be granted. |
| 233. | Every rule made by the State Government under section 219 and section 232 shall be laid, as soon as it is made, before the State Legislature. | Laying of rules before the State Legislature. |

Limited Grants

Grants Limited in Duration

- | | | |
|------|---|--|
| 234. | When a Will has been lost or mislaid since the testator's death or has been destroyed by wrong or accident and not by any act of the testator and a copy or the draft of the Will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it is produced. | Probate of copy or draft of lost Will. |
| 235. | When a Will has been lost or destroyed and no copy has been made, nor the draft preserved, probate may be granted of its contents, if they can be established by evidence. | Probate of contents of lost or destroyed Will. |
| 236. | When the Will is in the possession of a person residing out of the State, when application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor and it is necessary for the interests of the estate, that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the Will or an authenticated copy of it is produced. | Probate of copy where original exists. |
| 237. | Where no Will of the deceased is forthcoming, but there is reason to believe that there is a Will in existence, letters of administration may be granted, limited until the Will or an authenticated copy of it is produced. | Administration until Will produced. |

Grants for the Use and Benefit of others Having Right

- | | | |
|------|---|--|
| 238. | When any executor is absent from the State, in which application is made and there is no executor within the State willing to act, letters of administration, with the Will annexed, may be granted to the attorney or agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself. | Administration, with Will annexed to attorney of absent executor. |
| 239. | When any person, to whom, if present, letters of administration, with the Will annexed, might be granted, is absent from the State, letters of administration, with the Will annexed, may be granted to his attorney or agent, limited as mentioned in section 238. | Administration, with Will annexed to attorney of absent person who, if present, would be entitled to administer. |

- | | | |
|--|-------------|---|
| Administration to attorney of absent person entitled to administer in case of intestacy. | 240. | When a person entitled to administration in case of intestacy is absent from the State and no person equally entitled is willing to act, letters of administration may be granted to the attorney or agent of the absent person, limited as mentioned in section 238. |
| Administration during minority of sole executor or residuary legatee. | 241. | When a minor is sole executor or sole residuary legatee, letters of administration, with the Will annexed, may be granted to the legal guardian of such minor or to such other person, as the court may think fit, until the minor has attained his majority, at which period and not before, probate of the Will shall be granted to him. |
| Administration during minority of several executors or residuary legatees. | 242. | When there are two or more minor executors and no executor, who has attained majority or two or more residuary legatees and no residuary legatee, who has attained majority, the grant shall be limited, until one of them shall have attained his majority. |
| Administration for use and benefit of lunatic or minor. | 243. | If a sole executor or a sole universal or residuary legatee or a person, who would be solely entitled to the estate of the intestate according to the provisions of Chapter-I of this Part, is a minor or lunatic, letters of administration, with or without the Will annexed, as the case may be, shall be granted to the person, to whom the care of his estate has been committed by competent authority or if there is no such person, to such other person, as the court may think fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be. |
| Administration <i>pendent lite</i> . | 244. | Pending any suit touching the validity of the Will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate and every such administrator shall be subject to the immediate control of the court and shall act under its direction. |

Grants for Special Purposes

- | | | |
|--|-------------|---|
| Probate limited to purpose specified in Will. | 245. | If an executor is appointed for any limited purpose specified in the Will, the probate shall be limited to that purpose and if he should appoint an attorney or agent to take administration on his behalf, the letters of administration, with the Will annexed, shall be limited accordingly. |
| Administration with Will annexed, limited to particular purpose. | 246. | If an executor appointed generally gives an authority to an attorney or agent to prove a Will on his behalf, and the authority is limited to a particular purpose, the letters of administration, with the Will annexed, shall be limited accordingly. |

- 247.** Where a person dies, leaving estate of which he was the sole or surviving trustee or in which he had no beneficial interest on his own account and leaves no general representative or one, who is unable or unwilling to act as such, letters of administration, limited to such estate, may be granted to the beneficiary or to some other person on his behalf. **Administration limited to estate in which person has beneficial interest.**
- 248.** When it is necessary that the representative of a person deceased be made a party to a pending suit and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit or in any other cause or suit, which may be commenced in the same or in any other court between the parties or any other parties, touching the matters at issue in the said cause or suit and until a final decree shall be made therein and carried into complete execution. **Administration limited to suit.**
- 249.** If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator, to whom the same has been granted, is absent from the State and the court, which has granted the probate or letters of administration exercises jurisdiction, the court may grant, to any person, whom it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator and carrying the decree, which may be made therein into effect. **Administration limited to purpose of becoming party to suit to be brought against administrator.**
- 250.** In any case, in which it appears necessary for preserving the estate of a deceased person, the court, within whose jurisdiction any of the estate is situate, may grant to any person, whom such court may think fit, letters of administration limited to the collection and preservation of the estate of the deceased and to the giving of discharges for debts due to his estate, subject to the directions of the court. **Administration limited to collection and preservation of deceased's estate.**
- 251. (1)** When a person has died intestate or leaving a Will, of which there is no executor willing and competent to act or where the executor is, at the time of the death of such person, resident out of the State and it appears to the court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, in ordinary circumstances, would be entitled to a grant of administration, the court may, in its discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability, that it will be properly administered, appoint such person, as it thinks fit, to be administrator. **Appointment as administrator, of persons other than one who in ordinary circumstances, would be entitled to administration.**
- (2)** In every such case, letters of administration may be limited or not, as the court thinks fit.

Grants with Exception

- 252.** Whenever the nature of the case requires that an exception be made, probate of a Will or letters of administration with the Will annexed, shall be granted subject to such exception. **Probate or administration with Will annexed, subject to exception.**

Administration with exception.	253.	Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.
---------------------------------------	-------------	---

Grants of the Rest

Probate or administration of rest.	254.	Whenever a grant with exception of probate or of letters of administration with or without the Will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.
---	-------------	--

Grant of effects Unadministered

Grant of effects unadministered.	255.	If an executor, to whom probate has been granted has died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.
---	-------------	--

Rules as to grants of effects unadministered.	256.	In granting letters of administration of an estate not fully administered, the court shall be guided by the same rules as apply to original grants and shall grant letters of administration to those persons only, to whom original grants might have been made.
--	-------------	---

Administration, when limited grant expired and still some part of estate unadministered.	257.	When a limited grant has expired, by efflux of time or the happening of the event or contingency, on which it was limited and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons, to whom original grants might have been made.
---	-------------	--

Alteration and Revocation of Grants

What errors may be rectified by court.	258.	Errors in names and descriptions or in setting forth the time and place of the deceased's death or the purpose in a limited grant, may be rectified by the court and the grant of probate or letters of administration may be altered and amended accordingly.
---	-------------	--

Procedure, where codicil discovered after grant of administration with Will annexed.	259.	If, after the grant of letters of administration with the Will annexed, a codicil is discovered, it may be added to the grant on due proof and identification and the grant may be altered and amended accordingly.
---	-------------	---

Revocation or annulment for just cause.	260.	The grant of probate or letters of administration may be revoked or annulled for just cause.
--	-------------	--

Explanation.- Just cause shall be deemed to exist where, –

- (a) the proceedings to obtain the grant were defective in substance; or
- (b) the grant was obtained fraudulently by making a false suggestion or by concealing from the court something material to the case; or
- (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or
- (d) the grant has become useless and inoperative through circumstances; or

- (e) the person, to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with sections 311 to 326, or has exhibited under those provisions an inventory or account, which is untrue in a material respect.

Illustrations

- (i) The court, by which the grant was made had no jurisdiction.
- (ii) The grant was made without citing parties, who ought to have been cited.
- (iii) The Will, of which probate was obtained, was forged or revoked.
- (iv) A obtained letters of administration to the estate of B as his widow, but it has since transpired that she was never married to him.
- (v) A has taken administration to the estate of B, as if he had died intestate, but a Will has since been discovered.
- (vi) Since probate was granted, a later Will has been discovered.
- (vii) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the Will.
- (viii) The person to whom probate was or letters of administration were granted, has subsequently become of unsound mind.

Practice in Granting and Revoking Probates and Letters of Administration

- | | |
|---|---|
| <p>261. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.</p> | <p>Jurisdiction of District Judge in granting and revoking probates etc.</p> |
| <p>262. (1) The High Court may appoint such judicial officers within any district, as it thinks fit to act for the District Judge as delegates to grant probate and letters of administration in non-contentious cases, within such local limits, as it may prescribe;</p> <p>(2) Persons so appointed shall be called "District Delegates".</p> | <p>Power to appoint delegate of District Judge to deal with non-contentious cases.</p> |
| <p>263. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding pending in his court.</p> | <p>District Judge's powers as to grant of probate and administration.</p> |
| <p>264. (1) The District Judge may order any person to produce and bring into court any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person.</p> <p>(2) If it is not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the court may direct such person to attend for the purpose of being examined respecting the same.</p> | <p>District Judge may order person to produce testamentary papers.</p> |

- (3) Such person shall be bound to answer truly such question, as may be put to her/him by the court and if so ordered, to produce and bring in such paper or writing and shall be subject to the like punishment under the Bharatiya Nyaya Sanhita, 2023, (No. 45 of 2023) in case of default in not attending or in not answering such question or not bringing in such paper or writing, as he would have been subject to, in case he had been a party to a suit and had made such default.
- (4) The costs of the proceeding shall be in the discretion of the Judge.

Proceedings of District Judge's court in relation to probate and administration.

265. The proceeding of the court of the District Judge in relation to the granting of probate and letters of administration shall, save as hereinafter otherwise provided, be regulated, so far as the circumstances of the case permit, by the Code of Civil Procedure, 1908 (No. 5 of 1908).

When and how District Judge to interfere for protection of estate.

266. Until probate is granted of the Will of a deceased person or an administrator of his estate is constituted, the District Judge, within whose jurisdiction any part of the estate of the deceased person is situate, is authorised and required to interfere for the protection of such estate at the instance of any person claiming to be interested therein and in all other cases where the Judge considers that the estate incurs any risk of loss or damage and for that purpose, if he thinks fit, to appoint an officer to take and keep possession of the estate.

When probate or administration may be granted by District Judge.

267. Probate of the Will or letters of administration to the estate of a deceased person may be granted by a District Judge under the seal of his court, if it appears by a petition, verified as hereinafter provided, of the person applying for the same that the testator or intestate, as the case may be, at the time of his death, had a fixed place of abode or any estate, movable or immovable, within the jurisdiction of the Judge.

Disposal of application made to Judge of District, in which deceased had no fixed abode.

268. When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district or where the application is for letters of administration, to grant them absolutely or limited to the estate within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.

269. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case, in which there is no contention, if it appears by petition, verified as hereinafter provided, that the testator or intestate, as the case may be, at the time of his death, had a fixed place of abode within the jurisdiction of such Delegate.

Conclusiveness of probate or letters of administration.

270. Probate or letters of administration shall have effect over all the estate, of the deceased, throughout the State, in which the same is or are granted and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding estate, which belongs to him, and shall afford full indemnity to all debtors, paying their debts and all persons delivering up such estate to the person, to whom such probate or letters of administration have been granted:

Provided that probates and letters of administration granted by a District Judge where the deceased at the time of his death had a fixed place of abode situate within the jurisdiction of such Judge and such Judge certifies that the value of the estate and estate affected beyond the limits of the State does not exceed ten lakh rupees, shall, unless otherwise directed by the grant, have like effect throughout the other States.

- 271. (1)** Where probate or letters of administration has or have been granted by a District Judge with the effect referred to in the proviso to section 270, the District Judge shall send a certificate thereof to the High Court, to which such District Judge is subordinate and to each of the other High Courts.
- (2)** Every certificate referred to in sub-section (1) shall be made, as nearly as circumstances admit, in the form set forth in Schedule-III and such certificate shall be filed by the High Court receiving the same.
- (3)** Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 273 and 275 to be situate within the jurisdiction of a District Judge in another State, the court required to send the certificate referred to in sub-section (1) shall send a copy thereof to such District Judge and such copy shall be filed by the District Judge receiving the same.
- 272.** The application for probate or letters of administration, if made and verified in the manner hereinafter provided, shall be conclusive for the purpose of authorising the grant of probate or administration and no such grant shall be impeached by reason only, that the testator or intestate had no fixed place of abode or no estate within the district at the time of his death, unless by a proceeding to revoke the grant, if obtained by a fraud, upon the court.
- 273. (1)** Application for probate or for letters of administration, with the Will annexed, shall be made by a petition before the court in which the application is made, with the Will or in the cases mentioned in sections 234, 235 and 236, a copy, draft or statement of the contents thereof, annexed and stating,-
- (a)** the time of the testator's death,
- (b)** that the writing annexed is his last Will and testament,
- (c)** that it was duly executed,
- (d)** the amount of assets, which are likely to come to the petitioner's hands, and
- (e)** when the application is for probate, that the petitioner is the executor named in the Will.
- (2)** In addition to these particulars, the petition shall further state-
- (a)** when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some estate, situate within the jurisdiction of the Judge; and
- (b)** when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

Transmission to High Courts of certificate of grants under proviso to section 270.

Conclusiveness of application for probate or administration if properly made and verified.

Petition for probate.

In what cases
translation of
Will to be
annexed to
petition.

- (3) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges, within whose jurisdiction such assets are situate.

274. In cases wherein the Will, copy or draft, is written in any language other than Hindi/English, there shall be a translation thereof annexed to the petition by a translator of the court, if the language be one, for which a translator is appointed or if the Will, copy or draft, is in any other language, then by any person competent to translate the same, in which case, such translation shall be verified by that person in the following manner, namely:-

"I (A.B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for
letters of
administration.

275. (1) Application for letters of administration shall be made by petition distinctly written as aforesaid and stating-

- (a) the time and place of the deceased's death;
- (b) the family or other relatives of the deceased, and their respective residences;
- (c) the right in which the petitioner claims;
- (d) the amount of assets which are likely to come to the petitioner's hands;
- (e) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some estate, situate within the jurisdiction of the Judge; and
- (f) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

- (2) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.

Addition to
statement in
petition etc.

276. (1) Every person applying to any of the courts mentioned in the proviso to section 270 for probate of a Will or letters of administration of an estate intended to have effect throughout India, shall state in his petition, in addition to the matters respectively required by section 273 and section 275, that to the best of his belief no application has been made to any other court for a probate of the same Will or for letters of administration of the same estate, intended to have such effect as last aforesaid, or, where any such application has been made, the court, to which it was made, the person or persons, by whom it was made and the proceedings (if any) had thereon.

- (2) The court, to which any such application is made under the proviso to section 270 may, if it thinks fit, reject the same.

- | | | |
|----------|--|---|
| 277. | The petition for probate or letters of administration shall, in all cases, be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner, namely- | Petition for probate etc. to be signed and verified. |
| | “I (A.B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief.” | |
| 278. | Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the Will (when procurable) in the manner or to the effect following, namely:- | Verification of petition for probate, by one witness to Will. |
| | “I (C.D.), one of the witnesses to the last Will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (or that the said testator acknowledged the writing annexed to the above petition to be his last Will and testament in my presence).” | |
| 279. | If any petition or declaration, which is hereby required to be verified contains any averment, which the person making the verification knows or believes to be false, such person shall be deemed to have committed an offence under section 229 of the Bharatiya Nyaya Sanhita, 2023 (No. 45 of 2023). | Punishment for false averment in petition or declaration. |
| 280. (1) | In all cases the District Judge or District Delegate may, if he thinks proper,- | Powers of District Judge. |
| | (a) examine the petitioner in person, upon oath; | |
| | (b) require further evidence of the due execution of the Will or the right of the petitioner to the letters of administration, as the case may be; | |
| | (c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration. | |
| (2) | The citation shall be fixed up in some conspicuous part of the courthouse, and also in the office of the Collector of the district and otherwise published or made known in such manner, as the Judge or District Delegate issuing the same may direct. | |
| (3) | Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another State, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner, as if it were a citation issued by himself and shall certify such publication to the District Judge, who issued the citation. | |
| 281. (1) | Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate. | Caveats against grant of probate or administration. |
| | (2) Immediately on any caveat being lodged with any District Delegate, he shall send copy thereof to the District Judge. | |
| | (3) Immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had a fixed place of abode at the time of his death and to any other Judge or District Delegate, to whom it may appear to the District Judge expedient to transmit the same. | |

- (4) The caveat shall be made, as nearly as circumstances admit, in the form set forth in Schedule-4.
- After entry of caveat, no proceeding taken on petition, until after notice to caveator.** **282.** No proceeding shall be taken on a petition for probate or letters of administration, after a caveat against the grant thereof has been entered with the Judge or District Delegate, to whom the application has been made or notice has been given of its entry with some other Delegate, until after such notice to the person, by whom the same has been entered, as the court may think reasonable.
- District Delegate when not to grant probate or administration.** **283.** A District Delegate shall not grant probate or letters of administration in any case, in which there is contention as to the grant or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his court.
- Explanation.-** "Contention" means the appearance of any one in person or by his recognized agent or by a pleader duly appointed to act on his behalf, to oppose the proceeding.
- Power to transmit statement to District Judge in doubtful cases, where no contention.** **284.** In every case, in which there is no contention, but it appears to the District Delegate doubtful, whether the probate or letters of administration should or should not be granted or when any question arises in relation to the grant or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions, as to the Judge may seem necessary or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.
- Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused.** **285.** In every case, in which there is contention or the District Delegate is of opinion that the probate or letters of administration should be refused in his court, the petition, with any documents, which may have been filed therewith, shall be returned to the person, by whom the application was made, in order, that the same may be presented to the District Judge, unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorised to do and, in that case, the same shall be sent by him to the District Judge.
- Grant of probate to be under seal of court.** **286.** When it appears to the District Judge or District Delegate that probate of a Will should be granted, he shall grant the same under the seal of his court in the form set forth in Schedule-V.
- Grant of letters of administration to be under seal of court.** **287.** When it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the Will annexed, should be granted, he shall grant the same under the seal of his court, in the form set forth in Schedule-VI.
- Administration Bond.** **288.** Every person, to whom any probate or letters of administration is granted, shall give a bond to the District Judge with one or more surety or sureties engaging for the due collection, getting in and administering the estate of the deceased, which bond shall be in such form, as the Judge may, by general or special order, direct.

- 289.** The court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept and upon such terms as to security or providing that the money received be paid into court or otherwise, as the court may think fit, assign the same to some person, his executors or administrators, who shall thereupon be entitled to sue on the said bond in his or their own name or names, as if the same had been originally given to him or them, instead of to the Judge of the court and shall be entitled to recover thereon, as trustees for all persons interested, the full amount recoverable in respect of any breach thereof. **Assignment of administration bond.**
- 290.** No probate of a Will shall be granted, until after the expiration of seven clear days and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator's or intestate's death. **Time for grant of probate and administration.**
- 291. (1)** Every District Judge or District Delegate, shall file and preserve all original Wills, of which probate or letters of administration with the Will annexed may be granted by him, among the records of his court, until some public registry for Wills is established. **Filing of original Wills, of which probate or administration with Will annexed granted.**
- (2)** The State Government shall make regulations for the preservation and inspection of the Wills so filed.
- 292.** In any case before the District Judge, in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908 (No. 5 of 1908), in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff and the person, who has appeared to oppose the grant, shall be the defendant. **Procedure in contentious cases.**
- 293. (1)** When a grant of probate or letters of administration is revoked or annulled under this Part, the person, to whom the grant was made, shall forthwith deliver up the probate or letters to the court, which made the grant. **Surrender of revoked probate or letters of administration.**
- (2)** If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punished with fine, which may extend to ten thousand rupees or with imprisonment for a term, which may extend to three months or with both.
- 294.** When a grant of probate or letters of administration is revoked, all payments bona fide made to any executor or administrator under such grant before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same and the executor or administrator, who has acted under any such revoked grant, may retain and reimburse himself in respect of any payments made by him which the person to whom probate or letters of administration may afterwards be granted might have lawfully made. **Payment to executor or administrator before probate or administration revoked.**
- 295.** Notwithstanding anything hereinbefore contained, it shall be in the discretion of the court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Part. **Power to refuse letters of administration.**

Appeals from orders of District Judge.	296.	Every order made by a District Judge by virtue of the powers hereby conferred upon him, shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908 (No. 5 of 1908), applicable to appeals.
Removal of executor or administrator and provision for successor.	297.	The District Judge may, on application made to it, suspend, remove or discharge any private executor or administrator and provide for the succession of another person to the office of any such executor or administrator, who may cease to hold office and the vesting in such successor of any property belonging to the estate.
Directions to executor or administrator.	298.	Where probate or letters of administration in respect of any estate has or have been granted under this Part, the District Judge may, on application made to it, give to the executor or administrator, any general or special directions in regard to the estate or in regard to the administration thereof.

Executors of their own wrong

Executor of his own wrong.	299.	A person, who intermeddles with the estate of the deceased or does any other act, which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.
-----------------------------------	-------------	---

Exceptions.- (1) Intermeddling with the goods of the deceased, for the purpose of preserving them or providing for his funeral or for the immediate necessities of his family or estate, does not make an executor of his own wrong.

- (2) Dealing in the ordinary course of business, with goods of the deceased received from another, does not make an executor of his own wrong.

Illustrations

- (i) A uses or gives away or sells some of the goods of the deceased or takes them to satisfy his own debt or legacy or receives payment of the debts of the deceased. He is an executor of his own wrong.
- (ii) A, having been appointed agent by the deceased in his lifetime, to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.
- (iii) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

Liability of executor of his own wrong.	300.	When a person has so acted, as to become an executor of his own wrong, he is answerable to the rightful executor or administrator or to any creditor or legatee of the deceased, to the extent of the assets, which may have come to his hands, after deducting payments made to the rightful executor or administrator and payments made in due course of administration.
--	-------------	--

Powers of an Executor or Administrator

- 301.** An executor or administrator has the same power to sue in respect of all causes of action, that survive the deceased and may exercise the same power for the recovery of debts, as the deceased had, when living. **In respect of causes of action surviving deceased and debts due at death.**
- 302.** All demands, whatsoever and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his death, survive to and against his executors or administrators, except causes of action for defamation, assault, as defined in the Bharatiya Nyaya Sanhita, 2023(No. 45 of 2023) or other personal injuries, not causing the death of the party and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it, would be nugatory. **Demands and rights of action of or against deceased survive to and against executor or administrator.**

Illustrations

- (i) A collision takes place on a railway in consequence of some neglect or default of an official and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.
- (ii) A sues for divorce. A dies. The cause of action does not survive to his representative.

- 303. (1)** Subject to the provisions of sub-section (2), an executor or administrator has power to dispose of the estate of the deceased, vested in him under section 210, either wholly or in part, in such manner as he may think fit. **Power of executor or administrator to dispose of estate.**

Illustrations

- (i) The deceased has made a specific bequest of part of his estate. The executor, not having assented to the bequest, sells the subject of it. The sale is valid.
- (ii) The executor, in the exercise of his discretion, mortgages a part of the immovable estate of the deceased. The mortgage is valid.
- (2) The general power conferred by sub-section (1) shall be subject to the following restrictions and conditions, namely-
- (a) The power of an executor to dispose of immovable estate so vested in him, is subject to any restriction, which may be imposed in this behalf by the Will appointing him, unless probate has been granted to him and the court, which granted the probate, permits him by an order in writing, notwithstanding the restriction, to dispose of any immovable estate specified in the order, in a manner permitted by the order;

- (b) An administrator may not, without the previous permission of the court, by which the letters of administration were granted;
- (i) mortgage, charge or transfer by sale, gift, exchange or otherwise, any immovable estate for the time being vested in him under section 210; or
- (ii) lease any such estate, for a term exceeding five years.
- (c) A disposal of estate by an executor or administrator in contravention of clause (i) or clause (ii), as the case may be, is voidable at the instance of any other person interested in the estate.
- (3) Before any probate (s) or letters(s) of administration is or are granted, in such a case, there shall be endorsed thereon or annexed thereto a copy of sub-section (1) and clauses (i) and (iii) of sub-section (2) or of sub-section (1) and clauses (ii) and (iii) of sub-section (2), as the case may be.
- (4) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by sub-section (3) not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorise an executor or administrator to act otherwise than in accordance with the provisions of this section.
- General powers of administration.**
- 304.** An executor or administrator may, in addition to and not in derogation of any other powers of expenditure lawfully exercisable by him, incur expenditure,—
- (1) on such acts, as may be necessary for the proper care or management of any property belonging to any estate administered by him; and
- (2) with the prior permission of the District Judge, on such religious, charitable and other objects and on such improvements, as may be reasonable and proper in the case of such estate.
- Purchase by executor or administrator of deceased's estate.**
- 305.** If any executor or administrator purchases, either directly or indirectly, any part of the estate of the deceased, the sale is voidable at the instance of any other person interested in the estate sold.
- Powers of several executors or administrators exercisable by one.**
- 306.** When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them, who has proved the Will or taken out administration.

Illustrations

- (i) One of several executors has power to release a debt due to the deceased.
- (ii) One has power to surrender a lease.
- (iii) One has power to sell the estate of the deceased, whether movable or immovable.
- (iv) One has power to assent to a legacy.
- (v) One has power to endorse promissory note payable to the deceased.

- (vi) The Will appoints A, B, C and D to be executors and directs that two of them shall be a quorum. No act can be done by a single executor.
- 307.** Upon the death of one or more of several executors or administrators, in the absence of any direction to the contrary in the Will or grant of letters of administration, all the powers of the office become vested in the survivors or survivor. **Survival of powers on death of one of several executors or administrators.**
- 308.** The administrator of effects unadministered has, with respect to such effects, the same powers, as the original executor or administrator. **Powers of administrator of effects unadministered.**
- 309.** An administrator during minority has all the powers of an ordinary administrator. **Powers of administrator during minority.**
- 310.** When a grant of probate or letters of administration has been made to a married woman, she has all the powers of an ordinary executor or administrator. **Powers of married executrix or administratrix.**

Duties of an Executor or Administrator

- 311.** It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased, in a manner suitable to his condition, if he has left estate sufficient for the purpose. **As to deceased's funeral.**
- 312. (1)** An executor or administrator shall, within six months from the grant of probate or letters of administration or within such further time, as the court, which granted the probate or letters, may appoint, exhibit in that court, an inventory containing a full and true estimate of all the estate in possession and all the credits and also all the debts owing by any person, to which the executor or administrator is entitled in that character and shall in like manner, within one year from the grant or within such further time, as the said court may appoint, exhibit an account of the estate, showing the assets, which have come to his hands and the manner, in which they have been applied or disposed of. **Inventory and account.**
- (2) The High Court may prescribe the form, in which an inventory or account under this section, is to be exhibited-
- (3) If an executor or administrator, on being required by the court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 211 of the Bharatiya Nyaya Sanhita, 2023 (No. 45 of 2023).
- (4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 229 of the Bharatiya Nyaya Sanhita, 2023 (No. 45 of 2023).

Inventory to include estate in.	313.	In all cases, where a grant has been made of probate or letters of administration, intended to have effect throughout India, the executor or administrator shall include, in the inventory of the effects of the deceased, all his movable and immovable estate situate in India and the value of such estate situate in each state, shall be separately stated in such inventory and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the estate affected thereby, wheresoever situate within India.
As to estate of and debts owing to, deceased.	314.	The executor or administrator shall collect, with reasonable diligence, the estate of the deceased and the debts, that were due to him at the time of his death.
Expenses to be paid before all debts.	315.	Funeral expenses to a reasonable amount, according to the degree and quality of the deceased and death-bed charges, including fees for medical attendance and board and lodging for one month previous to his death, shall be paid before all debts.
Expenses to be paid next after such expenses.	316.	The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, shall be paid next after the funeral expenses and death-bed charges.
Wages for certain services to be next paid and then other debts.	317.	Wages due for services rendered to the deceased, within three months next preceding his death, by any labourer, artisan or domestic servant, shall next be paid and then the other debts of the deceased according to their respective priorities (if any).
Save as aforesaid, all debts to be paid equally and rateably.	318.	Save as aforesaid, no creditor shall have a right of priority over another, but the executor or administrator shall pay all such debts, as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.
Application of movable estate to payment of debts, where domicile not in India.	319. (1)	If the domicile of the deceased was not in India, the application of his movable estate to the payment of his debts, is to be regulated by the law of India.
	(2)	No creditor, who has received payment of a part of his debt, by virtue of sub section (1), shall be entitled to share in the proceeds of the immovable estate of the deceased, unless he brings such payment into account for the benefit of the other creditors.

Illustrations

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving movable estate to the value of 5,00,000 rupees and immovable estate to the value of 1,000,000 rupees, debts on instruments under seal, to the amount of 1,000,000 rupees and debts on instruments, not under seal, to the same amount. The creditors holding instruments under seal received half of their debts, out of the proceeds of the

movable estate. The proceeds of the immovable estate are to be applied in payment of the debts on instruments not under seal, until one-half of such debts have been discharged. This will leave 5,00,000 rupees, which are to be distributed rateably amongst all the creditors without distinction, in proportion to the amount, which may remain due to them.

- | | | |
|-------------|---|--|
| 320. | Debts of every description must be paid before any legacy. | Debts to be paid before legacies. |
| 321. | If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities, whenever they may become due. | Executor or administrator not bound to pay legacies without indemnity. |
| 322. | If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions and in the absence of any direction to the contrary in the Will, the executor has no right to pay one legatee in preference to another or to retain any money on account of a legacy to himself or to any person, for whom he is a trustee. | Abatement of general legacies. |
| 323. | Where there is a specific legacy and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement. | Non-abatement of specific legacy, when assets sufficient to pay debts. |
| 324. | Where there is a demonstrative legacy and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid, until such fund is exhausted and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets, as for a legacy of the amount of such unpaid remainder. | Rights under demonstrative legacy, when assets sufficient to pay debts and necessary expenses. |
| 325. | If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter, rateably in proportion to their respective amounts. | Rateable abatement of specific legacies. |

Illustration

A has bequeathed to B a diamond ring valued at 50,000 rupees and to C a motor vehicle, valued at 100,000 rupees. It is found necessary to sell all the effects of the testator and his assets, after payment of debts, are only 100,000 rupees. Of this sum, 33,333 rupees are to be paid to B and 66,667 rupees to C.

- | | | |
|-------------|---|---|
| 326. | For the purpose of abatement, a legacy for life, a sum appropriated by the Will to produce an annuity and the value of an annuity, when no sum has been appropriated to produce it, shall be treated as general legacies. | Legacies treated as general for purpose of abatement. |
|-------------|---|---|

Assent to a legacy by Executor or Administrator

**Assent
necessary to
complete
legatee's title.**

- 327.** The assent of the executor or administrator is necessary to complete a legatee's title to his legacy.

Illustrations

- (i) A by his Will bequeaths to B his Government paper, which is in deposit with the State Bank of India. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.
- (ii) A by his Will has bequeathed to C his house in Indore in the tenancy of B. C is not entitled to receive the rents without the assent of the executor or administrator.

**Effect of
executor's
assent to
specific legacy.**

- 328. (1)** The assent of the executor or administrator to a specific bequest shall be sufficient to divest his interest as executor or administrator therein, and to transfer the subject of the bequest of the legatee, unless the nature or the circumstances of the estate require that it shall be transferred in a particular way.
- (2)** This assent may be verbal and it may be either express or implied from the conduct of the executor or administrator.

Illustrations

- (i) A motor vehicle is bequeathed. The executor requests the legatee to dispose of it or a third party proposes to purchase the motor vehicle from the executor and he directs him to apply to the legatee. Assent to the legacy is implied.
- (ii) The interest of a fund is directed by the Will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.
- (iii) A bequest is made of a fund to A and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.
- (iv) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.
- (v) A person, to whom a specific article has been bequeathed, takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

**Conditional
assent.**

- 329.** The assent of an executor or administrator to a legacy, may be conditional and if the condition is one which he has a right to enforce and it is not performed, there is no assent.

Illustrations

- (i) A bequeaths to B his lands of Indore, which at the date of the Will and at the death of A, were subject to a mortgage for 5,00,000 rupees. The executor assents to the bequest, on condition, that B shall within a limited time, pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.
- (ii) The executor assents to a bequest on condition, that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

330. (1) When the executor or administrator is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way, as it is required, when the bequest is to another person and his assent may, in like manner, be expressed or implied.

Assent of executor to his legacy.

- (2) Assent shall be implied, if in his manner of administering the estate, he does any act, which is referable to his character of legatee and is not referable to his character of executor or administrator.

Illustrations

An executor takes the rent of a house or the interest of Government securities bequeathed to him and applied it to his own use. This is assent.

331. The assent of the executor or administrator to a legacy, gives effect to it from the death of the testator.

Effect of executor's assent.

Illustrations

- (i) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser and completes his title to the legacy.
- (ii) A bequeaths 100,000 rupees to B with interest from his death. The executor does not assent to his legacy, until the expiration of a year from A's death. B is entitled to interest from the death of A.

332. An executor or administrator is not bound to pay or deliver any legacy, until the expiration of one year from the testator's death.

Executor when to deliver legacies.

Illustration

A by his Will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

Payment and Apportionment of Annuities

333. Where an annuity is given by a Will and no time is fixed for its commencement, it shall commence from the testator's death and the first payment shall be made at the expiration of a year next after that event.

Commencement of annuity when no time fixed by Will.

When annuity, to be paid quarterly or monthly, first falls due.

- 334.** Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death and shall, if the executor or administrator thinks fit, be paid when due, but the executor or administrator shall not be bound to pay it till the end of the year.

Dates of successive payments, when first payment directed to be made within given period or on day certain.

- 335. (1)** Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator or on a day certain, the successive payments are to be made on the anniversary of the earliest day, on which the Will authorises the first payment to be made.
- (2)** If the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Investment of Funds to Provide for Legacies

Investment of sums bequeathed, where legacy, not specific, given for life.

- 336.** Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities, as the High Court may, by any general rule, authorise or direct and the proceeds thereof shall be paid to the legatee, as the same shall accrue due.

Investment of general legacy, to be paid at future time and disposal of intermediate interest.

- 337. (1)** Where a general legacy is given to be paid at a future time, the executor or administrator shall invest a sum sufficient to meet it in securities of the kind mentioned in section 336.
- (2)** The intermediate interest shall form part of the residue of the testator's estate.

Procedure when no fund charged with or appropriated to, annuity.

- 338.** Where an annuity is given and no fund is charged with its payment or appropriated by the Will to answer it, a Government annuity of the specified amount shall be purchased or if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in securities of the kind mentioned in section 336.

Transfer to residuary legatee of contingent bequest.

- 339.** Where a bequest is contingent, the executor or administrator is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee, if any, on his giving sufficient security for the payment of the legacy, if it shall become due.

Investment of residue bequeathed for life, without direction to invest in particular securities.

- 340.** Where the testator has bequeathed the residue of his estate to a person for life, without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's death invested in securities of the kind mentioned in section 336, shall be converted into money and invested in such securities.

- | | | |
|----------|--|--|
| 341. | When the testator has bequeathed the residue of his estate to a person for life with a direction, that it shall be invested in certain specified securities, so much of the estate, as is not at the time of his death invested in securities of the specified kind, shall be converted into money and invested in such securities. | Investment of residue bequeathed for life, with direction to invest in specified securities. |
| 342. | Such conversion and investment, as are contemplated by sections 340 and 341, shall be made at such times and in such manner, as the executor or administrator thinks fit and until such conversion and investment are completed, the person, who would be for the time being entitled to the income of the fund, when so invested, shall receive interest at the rate of six per cent per annum upon the market-value (to be computed as at the date of the testator's death) of such part of the fund, as has not been so invested. | Time and manner of conversion and investment. |
| 343. (1) | Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor and there is no direction in the Will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the court of the District Judge, by whom or by whose District Delegate the probate was or letters of administration with the Will annexed were, granted to the account of the legatee. | Procedure when minor entitled to immediate payment or possession of bequest and no direction to pay to person on his behalf. |
| (2) | Such payment into the court of the District Judge shall be a sufficient discharge for the money so paid. | |
| (3) | Money when paid in under this section, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto or otherwise applied for his benefit, as the Judge may direct. | |
| 344. | The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death. | Legatee's title to produce specific legacy. |

Exception.- A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations

- (i) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn or some of the ewes produce lambs. The wool and lambs are the estate of B.
- (ii) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest, which falls due between the death of A and the death of C belongs to B and must, unless he is a minor, be paid to him as it is received.
- (iii) The testator bequeaths all his four per cent Government promissory notes to A, when he shall complete the age of 18. A, if he

completes that age, is entitled to receive the notes, but the interest, which accrues in respect of them between the testator's death and A's completing 18, forms part of the residue.

Residuary legatee's title to produce of residuary fund.

345. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.— A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations

- (i) The testator bequeaths the residue of his estate to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.
- (ii) The testator bequeaths the residue of his estate to A, when he shall complete the age of 18. A, if he completes that age, is entitled to receive the residue. The income, which has accrued in respect of it since the testator's death, goes as undisposed of.

Interest, when no time fixed for payment of general legacy.

346. Where no time has been fixed for the payment of a general legacy, interest begins to run from expiration of one year from the testator's death.

Exceptions—

- (1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.
- (2) Where the testator was a parent or a more remote ancestor of the legatee or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.
- (3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest, when time fixed.

347. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception.— Where the testator was a parent or a more remote ancestor of the legatee or has put himself in the place of a parent of the legatee and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the Will for maintenance or unless the Will contains a direction to the contrary.

Rate of interest.

348. The rate of interest shall be six per cent per annum.

349. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the Will for making the first payment of the annuity.

No interest on arrears of annuity within first year, after testator's death.

350. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

Interest on sum to be invested to produce annuity.

Refunding of Legacies

351. When an executor or administrator has paid a legacy under the order of a court, he is entitled to call upon the legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

Refund of legacy paid under court's orders.

352. When an executor or administrator has voluntarily paid a legacy, he cannot call upon a legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

No refund, if not paid voluntarily.

353. When the time prescribed by the Will for the performance of a condition has elapsed, without the condition having been performed and the executor or administrator has thereupon, without fraud, distributed the assets, in such case, if further time has been allowed under section 137 for the performance of the condition and the condition has been performed accordingly, the legacy cannot be claimed from the executor or administrator, but those, to whom he has paid it, are liable to refund the amount.

Refund, when legacy has become due on performance of condition within further time allowed under section 137.

354. When the executor or administrator has paid away the assets in legacies and he is afterwards obliged to discharge a debt, of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

When each legatee compellable to refund in proportion.

355. Where an executor or administrator has given such notices, as the High Court may, by any general rule, prescribe for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof, in discharge of such lawful claims as he knows of and shall not be liable for the assets so distributed to any person, of whose claim he shall not have had notice at the time of such distribution:

Distribution of assets.

Provided that nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof, in the hands of the persons, who may have received the same respectively.

356. A creditor, who has not received payment of his debt may call upon a legatee, who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient, at the time of his death to pay both debts and legacies and whether the payment of the legacy by the executor or administrator was voluntary or not.

Creditor may call legatee to refund.

357. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee, who has not received payment of his legacy or who has been compelled to refund under section 356, cannot oblige one, who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When legatee, not satisfied or compelled to refund under section 356 cannot oblige one paid in full in refund.

When unsatisfied legatee must first proceed against executor, if solvent.

358. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee, who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor or administrator, if he is solvent, but if the executor or administrator is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

Limit to refunding of one legatee to another.

359. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced, if the estate had been properly administered.

Illustration

A has bequeathed 24,000 rupees to B, 48,000 rupees to C and 72,000 rupees to D. The assets are only 120,000 rupees and if properly administered, would give 20,000 rupees to B, 40,000 rupees to C and 60,000 rupees to D. C and D have been paid their legacies in full leaving nothing to B. B can oblige C to refund 8,000 rupees and D to refund 12,000 rupees.

Refunding to be without interest.

360. The refunding shall, in all cases, be without interest.

Residue after usual payments to be paid to residuary legatee.

361. The surplus or residue of the deceased's estate, after payment of debts and legacies, shall be paid to the residuary legatee, when any has been appointed by the Will.

Transfer of assets from India to executor or administrator in country of domicile for distribution.

362. Where a person not having his domicile in India has died leaving assets both in India and in the country, in which he had his domicile at the time of his death and there has been a grant of probate or letters of administration in India with respect to the assets there and a grant of administration in the country of domicile, with respect to the assets in that country, the executor or administrator, as the case may be, in India, after having given such notices as are mentioned in section 355 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's estate to persons residing out of India, who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

Liability of an Executor or Administrator for Devastation

Liability of executor or administrator for devastation.

363. When an executor or administrator misapplies the estate of the deceased or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations

- (i) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.
- (ii) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.
- (iii) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

Liability of executor or administrator for neglect to get any part of estate.

364. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the estate of the deceased, he is liable to make good the amount.

Illustrations

- (i) The executor absolutely releases a debt due to the deceased from a solvent person or compounds with a debtor, who is able to pay in full. The executor is liable to make good the amount.
- (ii) The executor neglects to sue for a debt till the debtor is able to plead that the claim is barred by limitation and the debt is thereby lost to the estate. The executor is liable to make good the amount.

CHAPTER VI

SUCCESSION CERTIFICATES

- 365.** The District Judge, within whose jurisdiction the deceased ordinarily resided at the time of his death or if at that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the estate of the deceased may be found, may grant a certificate under this Chapter. **Court having jurisdiction to grant certificate.**
- 366.** (1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (No. 5 of 1908), for the signing and verification of a plaint by or on behalf of a plaintiff and setting forth the following particulars, namely,- **Application for certificate.**
- (a) the time of the death of the deceased;
 - (b) the ordinary residence of the deceased at the time of his death and if such residence was not within the local limits of the jurisdiction of the Judge, to whom the application is made, then the estate of the deceased within those limits;
 - (c) the family or other near relatives of the deceased and their respective residences;
 - (d) the right, in which the petitioner claims;
 - (e) the absence of any impediment under any provision of this Part or any other enactment, to the grant of the certificate or to the validity thereof, if it were granted; and
 - (f) the debts and securities, in respect of which the certificate is applied for.
- (2) If the petition contains any averment, which the person verifying it knows or believes to be false or does not believe to be true, that person shall be deemed to have committed an offence under Section 235 of the Bharatiya Nyaya Sanhita, 2023 (No. 45 of 2023).
- (3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.
- 367.** (1) If the District Judge is satisfied that there is ground for entertaining the application, he shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing-
- (a) to be served on any person, to whom, in the opinion of the Judge, special notice of the application should be given; and
- Procedure on application.**

- (b) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Judge, subject to any rules made by the High Court in this behalf, thinks fit and upon the day fixed or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to him.

(3) If the Judge cannot decide the right to the certificate without determining questions of law or fact, which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant, if he appears to be the person having prima facie the best title thereto.

(4) When there are more applicants than one for a certificate and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.

Contents of certificate.

368. When the District Judge grants a certificate, he shall therein specify the debts and securities set forth in the application for the certificate and may thereby empower the person, to whom the certificate is granted,-

- (a) to receive interest or dividends on; or
- (b) to negotiate or transfer; or
- (c) both to receive interest or dividends on and to negotiate or transfer, the securities or any of them.

Requisition of security from grantee of certificate.

369. (1) The District Judge shall, in any case, in which he proposes to proceed under sub-section (3) or sub-section (4) of section 367 and may, in any other case, require, as a condition precedent to the granting of a certificate, that the person, to whom he proposes to make the grant, shall give to the Judge a bond with one or more surety or sureties or other sufficient security, for rendering an account of debts and securities received by him and for indemnity of persons, who may be entitled to the whole or any part of those debts and securities.

(2) The Judge may, on application made by petitioner and on cause shown to his satisfaction and upon such terms as to security or providing that the money received be paid into court, or otherwise, as he thinks fit, assign the bond or other security to some proper person and that person shall thereupon be entitled to sue thereon in his own name, as if it had been originally given to him instead of to the Judge of the court and to recover, as trustee for all persons interested, such amount, as may be recoverable thereunder.

Extension of certificate.

370. (1) A District Judge may, on the application of the holder of a certificate under this Chapter, extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect, as if the debt or security, to which the certificate is extended had been originally specified therein.

(2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on or the negotiations or transfer of, any security to which the certificate has been extended may be conferred and a bond or further bond or other security for the purposes mentioned in section 369, may be required in the same manner, as upon the original grant of a certificate.

- 371.** Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the forms set forth in Schedule-VII. **Forms of certificate and extended certificate.**
- 372.** Where a District Judge has not conferred on the holder of a certificate any power with respect to a security specified in the certificate or has only empowered him to receive interest or dividends on or to negotiate or transfer the security, the Judge may, on application made by petitioner and on cause shown to his satisfaction, amend the certificate by conferring any of the powers mentioned in section 368 or by substituting any one for any other of those powers. **Amendment of certificate in respect of powers as to securities.**
- 373.** (1) Every application for a certificate or for the extension of a certificate, shall be accompanied by a deposit of a sum equal to the fee payable under the Court-Fees Act, 1870 (No. 7 of 1870), in respect of the certificate or extension applied for. **Mode of collecting court-fees on certificate.**
- (2) If the application is allowed, the sum deposited by the applicant, shall be expended, under the direction of the Judge, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.
- (3) Any sum received under sub-section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it.
- 374.** A certificate under this Chapter shall have effect throughout India. **Local extent of certificate.**
- 375.** Subject to the provisions of this Chapter, the certificate of the District Judge shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities and shall, notwithstanding any defect, afford full indemnity to all such persons, as regards all payments made or dealings had, in good faith in respect of such debts or securities to or with the person to, whom the certificate was granted. **Effect of certificate.**
- 376.** A certificate granted under this Chapter may be revoked for any of the following causes, namely:- **Revocation of certificate.**
- (a) that the proceedings to obtain the certificate were defective in substance;
 - (b) that the certificate was obtained fraudulently by the making of a false suggestion or by the concealment from the court, of something material to the case;
 - (c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law, to justify the grant thereof, though such allegation was made in ignorance or inadvertently;
 - (d) that the certificate has become useless and inoperative through circumstances;
 - (e) that a decree or order made by a competent court in a suit or other proceeding, with respect to effects comprising debts or securities, specified in the certificate, renders it proper that the certificate should be revoked.
- 377.** (1) Subject to the other provisions of this Chapter, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Chapter and the High Court may, if it thinks fit, by its order on the appeal, declare the person, to whom the certificate should be granted and direct the District Judge, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted. **Appeal.**

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908 (No. 5 of 1908).

(3) Subject to the provisions of sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908 (No. 5 of 1908), as applied by section 141 of that Code, an order of a District Judge under this Part, shall be final.

Effect on certificate of previous certificate, probate or letters of administration.

378. Save as provided by this Part, a certificate granted thereunder in respect of any of the effects of a deceased person, shall be invalid, if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force.

Validation of certain payments made in good faith to holder of invalid certificate.

379. Where a certificate under this Chapter has been superseded or is invalid by reason of the certificate having been revoked under section 376, or by reason of the grant of a certificate to a person named in an appellate order under section 377 or by reason of a certificate having been previously granted or for any other cause, all payments made or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate, in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate.

Effect of decisions under this Part, and liability of holder of certificate thereunder.

380. No decision under this Chapter, upon any question of right between any parties, shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties and nothing in this Chapter shall be construed to affect the liability of any person, who may receive the whole or any part of any debt or security or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.

Investiture of inferior courts with jurisdiction of District Court for purposes of this Part.

381. (1) The State Government may, by notification in the Official Gazette, invest any court inferior in grade to a District Judge, with power to exercise the functions of a District Judge under this Chapter.

(2) Any inferior court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by this Chapter upon the District Judge and the provisions of this Chapter relating to the District Judge, shall apply to such an inferior court, as if it were a District Judge:

Provided that an appeal from any such order of an inferior court, as is mentioned in sub-section (1) of section 377 shall lie to the District Judge and not to the High Court and that the District Judge may, if he thinks fit, by his order on the appeal, make any such declaration and direction, as that sub-section authorises the High Court to make, by its order on an appeal from an order of a District Judge.

(3) An order of a District Judge on an appeal from an order of an inferior court under the last foregoing sub-section shall, subject to the provisions, as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908 (No. 5 of 1908), as applied by section 141 of that Code, be final.

(4) The District Judge may withdraw any proceedings under this Chapter from an inferior court and may either himself dispose of them or transfer them to another such court established within the local limits of the jurisdiction of the District Judge and having authority to dispose of the proceedings.

(5) A notification under sub-section (1) may specify any inferior court specially or any class of such courts in any local area.

(6) Any civil court, which for any of the purposes of any enactment is subordinate to or subject to the control of, a District Judge shall, for the purposes of this section, be deemed to be a court inferior in grade to a District Judge.

382. (1) When a certificate under this Chapter has been superseded or is invalid from any of the causes mentioned in section 379, the holder thereof shall, on the requisition of the court, which granted it, deliver it up to that court.

Surrender of superseded and invalid certificates.

(2) If she/he wilfully and without reasonable cause omits so to deliver it up, she/he shall be punished with fine, which may extend to ten thousand rupees or with imprisonment for a term, which may extend to three months or with both.

CHAPTER – VII

MISCELLANEOUS

383. Nothing in Chapter II of this Part shall authorise a testator to,-

Savings.

- (a) bequeath estate, which he could not have alienated *inter vivos*;
- (b) deprive any persons of any right of maintenance, of which he could not otherwise deprive them by Will.

PART-3

LIVE-IN RELATIONSHIP

384. (1) It shall be obligatory for partners to a live-in relationship within the State, whether they are residents of Madhya Pradesh or not, to submit a statement of live-in relationship under sub-section (1) of section 387, to the Registrar within whose jurisdiction they are so living.

Submission of statement by partners to a live-in relationship.

(2) Any resident(s) of Madhya Pradesh staying in a live-in relationship outside the territory of the State may submit a statement of live-in relationship under sub-section (1) of section 387, to the Registrar within whose jurisdiction such resident(s) ordinarily resides.

385. Any child of a live-in relationship shall be a legitimate child of the couple.

Children of live-in relationship.

386. A live-in relationship between two persons shall not be registered-

When live-in relationships not to be registered.

- (1) where the partners are within the degrees of prohibited relationship as defined under clause (d) of sub-section (1) of section 3:

Provided that the prohibitions shall not apply to person(s) whose custom and usage permit the relationship, if it were a marriage;

- (2) where at least one of the persons is married or is already in a live-in relationship; or
- (3) where at least one of the persons is a minor; or
- (4) where the consent of one of the partners was obtained by force, coercion, undue influence, misrepresentation or fraud as to any material fact or circumstance concerning the other partner, including her/his identity.

Procedure for registration of live-in relationship.

387. (1) Partners in a live-in relationship or persons intending to enter into a live-in relationship shall submit a statement of live-in relationship to the Registrar concerned in such format and in such manner, as may be prescribed.

(2) The Registrar shall examine the contents of the statement of live-in relationship so submitted and satisfy herself/himself by conducting a summary inquiry that the live-in relationship is not of such a kind as is mentioned under section 386.

(3) In conducting summary inquiry under sub-section (2), the Registrar may summon the partners/persons or any other person for verification in the prescribed manner and require the partners/persons to supply additional information or evidence, if necessary.

(4) After conducting such summary inquiry, as may be deemed appropriate, the Registrar shall, within thirty days of the receipt of the statement of live-in relationship under sub-section (1), either-

- (a) enter such statement in a prescribed register for registering the live-in relationship and issue a registration certificate in the prescribed format to the partners/persons; or
- (b) refuse to register such statement, in that case the Registrar shall inform the partners/persons of the reasons, in writing, for such refusal.

Registration under this Part only for record.

388. Registration regarding live-in relationship under clause (a) of sub-section (4) of section 387 shall be only for the purposes of record.

Empowerment of Registrar under this Part, and maintenance of registers.

389. (1) The State Government may, by notification in the Madhya Pradesh Government Gazette, empower a Registrar appointed under Part-1 to act as Registrar under this Part.

(2) The Registrar shall maintain registers for statements of live-in relationships and statements of termination of live-in relationships and such other registers and in such manner, as may be prescribed.

Submission of statement of termination of live-in relationship.

390. Both partners to a live-in relationship or either of them, may terminate it and submit a statement of termination in the prescribed format and in the prescribed manner to the Registrar, within whose jurisdiction such resident(s) ordinarily resides and provide a copy of such statement to the other partner, in case only one of the partners terminates the live-in relationship. In such cases, the registrar shall issue a certificate regarding termination of the live-in relationship to both the partners, in a format prescribed by the State Government:

Provided that a live-in relationship shall automatically be considered terminated, if both the partners marry each other in accordance with the relevant provisions of this Code.

Duties of Registrar.

391. (1) Any statement of live-in relationship submitted under sub-section (1) of section 387 shall be forwarded by the Registrar to the officer-in-charge of the local police station, for record and in case either of the partners is less than twenty-one years of age, also to the parents/guardians of such partner(s).

(2) If the Registrar comes to the conclusion that the relationship is of such a kind as is mentioned under section 386 or that the contents of the statement under sub-section (1) of section 387 are incorrect or suspicious, she/he shall inform the officer-in-charge of the local police station for appropriate action.

(3) On any statement of termination being submitted under section 390 by one partner to a live-in relationship, the Registrar shall inform the other partner about such statement and in case either of the partners is less than twenty-one years of age, also to the parents/guardians of such partner(s).

392. Where any partner(s) to a live-in relationship has failed to submit the statement of such relationship, the Registrar, either of her/his own motion or on receipt of a complaint or information in this regard, shall by notice require such partner(s) to submit a statement in a prescribed manner, within thirty days from the date of receipt of such notice. On such statement being submitted, the Registrar shall act in accordance with the procedure laid down in the preceding provisions.

Notice for registration of live-in relationship.

Offences and punishment

393. Whoever stays in a live-in relationship for more than one month from the date of entering into such relationship, without submitting the statement of such relationship under sub-section (1) of section 387 shall, be punished by a Judicial Magistrate with imprisonment for a term, which may extend to three months or with fine not exceeding ten thousand rupees or with both.
394. Any person, who makes any averment in the statement of live-in relationship submitted under sub-section (1) of section 387, which is false and which she/he knows or has reason to believe to be false or withholds any material fact therefrom affecting the decision of the Registrar, whether to register such live-in relationship or refuse to do so, shall, be punished with imprisonment for a term, which may extend to three months or with fine not exceeding twenty-five thousand rupees, or with both.
395. Any partner to a live-in relationship, who fails to submit the statement of live-in relationship on being required by a notice to do so under section 392 shall, be punished by a Judicial Magistrate with imprisonment for a term which may extend to six months or with fine not exceeding twenty-five thousand rupees or with both.
396. Whoever obtains the consent of any person by force, coercion or fraud to establish a live-in relationship shall be punished with imprisonment for a term, which may extend to five years and shall also be liable to fine.
397. Whoever stays in a live-in relationship in contravention of sub-section (2) of section 386 shall be punished with imprisonment for a term, which may extend to five years and shall also be liable to fine:
- Provided that nothing in this sub-section shall apply to a person, who has terminated the live-in relationship or whose partner has not been heard of for a period of seven years or more.
398. Any major person, who lives in a live-in relationship with minor in contravention of sub-section (3) of section 386 shall be punished according to the provisions contained in the Protection of Children from Sexual Offences Act, 2012.

Punishment for non-submission of statement of live-in relationship.

Punishment for false averment in the statement of live-in relationship.

Punishment for non-submission of statement of live-in relationship even after notice under section 392.

Punishment for obtaining consent for live-in relationship by force, coercion or fraud .

Punishment for being in live-in relationship in contravention of sub-section (2) of section 386.

Punishment for being in live-in relationship with minor.

Maintenance.

399. If a woman gets deserted by her live-in partner, she shall be entitled to claim maintenance from her live-in partner, for which she may approach the competent court having jurisdiction over the place where they last cohabited and in such a case the provisions contained in Chapter-V, Part -1 of this Code shall *mutatis-mutandis* apply.

Appeal against refusal of registration.

400. (1) Where the Registrar rejects a statement of live-in relationship presented under sub-section (1) of section 387, both or either partner may, within a period of thirty days from the date of receipt of such rejection order, prefer an appeal to the Registrar General or to an official designated by the State Government to decide such appeals, whose decision thereon shall be final:

Provided that the Registrar General or the designated official, may entertain an appeal presented beyond the prescribed period, on being satisfied, that there are sufficient grounds for not presenting the appeal within such period.

(2) An appeal under sub-section (1) shall be accompanied with a duly certified copy of the rejection order and shall be in such form and manner, as may be prescribed.

(3) While deciding the appeal, the Registrar General or the designated official, to whom the appeal under sub-section (1) has been preferred shall, after having regard to the circumstances and upon recording the reasons in writing, either direct the Registrar to enter the particulars in the prescribed register and issue registration certificate or confirm the order of the Registrar:

Provided that no order confirming the order of the Registrar shall be passed without providing the partners an opportunity of being heard.

(4) An appeal under sub-section (1) shall, as far as possible, be decided within a period of sixty days from the date of its filing.

Power to make rules.

401. The State Government may, by notification in the Madhya Pradesh Government Gazette, make rules for carrying out the purposes of this Part.

PART – 4**MISCELLANEOUS****Repeal and Savings.**

402. (1) Subject to the provisions of section 2 of this Code, any law (statutory or otherwise), practice, custom and usage, in force, in the State, immediately before the commencement of this Code, relating to the matters covered by this Code, shall cease to have effect within the territory of the State, in so far as they are inconsistent with any of the provisions contained in this Code.

(2) Nothing contained in this Code shall affect any right, liability or obligation accrued or proceedings initiated under any law, for the time being in force, prior to the commencement of this Code, relating to the matters covered by this Code and such right, liability or obligation accrued or proceedings initiated shall continue as per the law (statutory or otherwise), practice, custom and usage existing on the date of commencement of this Code.

(3) The Madhya Pradesh Compulsory Registration of Marriages Rules, 2008, is hereby repealed.

- 403.** (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Code. **Power to make rules.**
- (2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
- (a) facilitating the processes by putting in place electronic and digital systems, including electronic registers and allowing parties to make submissions and applications through designated web portals;
 - (b) facilitation and encouragement of registration of marriages, including compulsory registration for availing benefits under Government sponsored welfare schemes; and
 - (c) any other matter, which is required to be or may be, prescribed or provided for by rules.
- 404.** (1) If any difficulty arises in giving effect to the provisions of the Code, the State Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Code as appear to it to be necessary or expedient for removing the difficulty: **Power to remove difficulties.**
- Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Code.
- (2) Every order made under this section shall, as soon as may be after it is made, be laid before the State Legislative Assembly.
-

Schedule – I

[See Section 3(1)(d)]

Lists of Prohibited Relationships**List – 1**

1. Mother.
2. Father's widow (step-mother).
3. Mother's mother.
4. Mother's father's widow (step grand-mother).
5. Mother's mother's mother.
6. Mother's mother's father's widow (step great grand-mother).
7. Mother's father's mother.
8. Mother's father's father's widow (step great grand-mother).
9. Father's mother.
10. Father's father's widow (step-grand mother).
11. Father's mother's mother.
12. Father's mother's father's widow (step great grand-mother).
13. Father's father's mother.
14. Father's father's father's widow (step great grand-mother).
15. Daughter.
16. Son's widow.
17. Daughter's daughter.
18. Daughter's son's widow.
19. Son's daughter.
20. Son's son's widow.
21. Daughter's daughter's daughter.
22. Daughter's daughter's son's widow.
23. Daughter's son's daughter.
24. Daughter's son's son's widow.
25. Son's daughter's daughter.
26. Son's daughter's son's widow.
27. Son's son's daughter.
28. Son's son's son's widow.
29. Sister.
30. Sister's daughter.
31. Brother's daughter.
32. Mother's sister.
33. Father's sister.

34. Father's brother's daughter.
35. Father's sister's daughter.
36. Mother's sister's daughter.
37. Mother's brother's daughter.

Explanation - For the purposes of this Part, the expression "widow" includes a divorced wife.

List – 2

1. Father.
2. Mother's husband (step-father).
3. Father's father.
4. Father's mother's husband (step grand-father).
5. Father's father's father.
6. Father's father's mother's husband (step great grand-father).
7. Father's mother's father.
8. Father's mother's mother's husband (step great grand-father).
9. Mother's father.
10. Mother's mother's husband (step grand-father).
11. Mother's father's father.
12. Mother's father's mother's husband (step great grand-father).
13. Mother's mother's father.
14. Mother's mother's mother's husband (step great grand-father).
15. Son.
16. Daughter's husband.
17. Son's son.
18. Son's daughter's husband.
19. Daughter's son.
20. Daughter's daughter's husband.
21. Son's son's son.
22. Son's son's daughter's husband.
23. Son's daughter's son.
24. Son's daughter's daughter's husband.
25. Daughter's son's son.
26. Daughter's son's daughter's husband.
27. Daughter's daughter's son.
28. Daughter's daughter's daughter's husband.
29. Brother.
30. Brother's son.
31. Sister's son.

32. Mother's brother.
33. Father's brother.
34. Father's brother's son.
35. Father's sister's son.
36. Mother's sister's son.
37. Mother's brother's son.

Explanation - For the purposes of this part, the expression "husband" includes a divorced husband.

Schedule – II

[See Section 55]

Lists of Heirs for Succession

Class – 1

1. Son.
2. Daughter.
3. Widow/Widower
4. Mother and father.
5. Son of a predeceased son.
6. Daughter of a predeceased son.
7. Son of a predeceased daughter.
8. Daughter of a predeceased daughter.
9. Widow of a predeceased son.
10. Son of a predeceased son of a predeceased son.
11. Daughter of a predeceased son of a predeceased son.
12. Widow of a predeceased son of a predeceased son.
13. Son of a predeceased daughter of a predeceased daughter.
14. Son of a predeceased daughter of a predeceased son.
15. Son of a predeceased son of a predeceased daughter.
16. Daughter of a predeceased daughter of a predeceased daughter.
17. Daughter of a predeceased son of a predeceased daughter.
18. Daughter of a predeceased daughter of a predeceased son.

Class – 2

- | | | | |
|------------------|-----|---------------------|--------|
| <i>Entry I.</i> | (1) | Brother(2) | Sister |
| <i>Entry II.</i> | (1) | Brother's son. | |
| | (2) | Sister's son. | |
| | (3) | Brother's daughter. | |
| | (4) | Sister's daughter. | |

Entry III.	(1)	Father's father.
	(2)	Father's mother.
Entry IV.	(1)	Father's widow (Step mother).
	(2)	Brother's widow.
Entry V.	(1)	Father's brother.
	(2)	Father's sister.
Entry VI.	(1)	Mother's father.
	(2)	Mother's mother.
Entry VII.	(1)	Mother's brother.
	(2)	Mother's sister.

Schedule – III

[See Section 271(2)]

Form of Certificate

I,, Judge of the District of, hereby certify that on the day of, the court granted probate of the Will (or letters of administration of the estate) of A.B. of (deceased) to C.D. of and E.F. of, and that such probate (or letters) has (or have) effect over all the estate of the deceased throughout India.

Schedule – IV

[See Section 281(4)]

Form of Caveat

Let nothing be done in the matter of the estate of A. B. of (deceased), who died on the day of at, without notice to C.D. of.....

Schedule – V

[See Section 286]

Form of Probate

I,, Judge of the District of [or Delegate appointed for granting probate or letters of administration in *(here insert the limits of the Delegate's jurisdiction)*], hereby make known that on the day of in the year, the last Will of (deceased) of, a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the estate and credits of the said deceased, and in any way concerning her/his Will was granted to, the executor in the said Will named, she/he having undertaken to administer the same, and to make a full and true inventory of the said estate and credits and exhibit the same in this court within six months from the date of this grant or within such further time as the court may, from time to time, appoint, and also to render to this court a true account of the said estate and credits within one year from the same date, or within such further time as the court may, from time to time, appoint.

Schedule – VI

[See Section 287]

Form of Letters of Administration

I,, Judge of the District of[or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)], hereby make known that on the day of letters of administration (with or without the Will annexed, as the case may be) of the estate and credits of (deceased) of were granted to, the (relation, if any) of the deceased, she/he having undertaken to administer the same and to make a full and true inventory of the said estate and credits and exhibit the same in this court within six months from the date of this grant or within such further time as the court may, from time to time, appoint, and also to render to this court a true account of the said estate and credits within one year from the same date, or within such further time as the court may, from time to time, appoint.

Schedule – VII

[See Section 371]

Forms of Certificate and Extended Certificate***In the court of***

To A.B.

Whereas you applied on the day of for a certificate under Chapter-6 of Part-2 of the Madhya Pradesh Uniform Civil Code, 2026, in respect of the following debts and securities, namely:

Debts

<i>Serial Number</i>	<i>Name of Debtor</i>	<i>Amount of debt, including interest, on date of application for certificate</i>	<i>Description and date of instrument, if any, by which the debt is secured</i>

Securities

<i>Serial Number</i>	<i>Description</i>			<i>Market-value of security on date of application for certificate</i>
	<i>Distinguishing number or letter of security</i>	<i>Name, title or class of security</i>	<i>Amount or par value of security</i>	

This certificate is accordingly granted to you and empowers you to collect those debts [*and*][*to receive*][*interest*][*dividends*] [*on*][*to negotiate*][*to transfer*][*those securities*].

Dated this day of

District Judge

In the court of

On the application of A. B. made to me on the..... day of, I hereby extend this certificate to the following debts and securities, namely:

Debts

<i>Serial Number</i>	<i>Name of Debtor</i>	<i>Amount of debt, including interest, on date of application for certificate</i>	<i>Description and date of instrument, if any, by which the debt is secured</i>

Securities

<i>Serial Number</i>	<i>Description</i>			<i>Market-value of security on date of application for certificate</i>
	<i>Distinguishing number or letter of security</i>	<i>Name, title or class of security</i>	<i>Amount or par value of security</i>	

This extension empowers A. B. to collect those debts [and][to receive][interest][dividends][on][to negotiate][to transfer][those securities].

Dated this day of

District Judge

STATEMENT OF OBJECTS AND REASONS

The Constitution of India, under article 44 directs the State to endeavour to secure a Uniform Civil Code for its citizens. Personal laws governing marriage, divorce, inheritance and related family matters have evolved differently across communities resulting in variations in legal rights and obligations. These differences have often led to unequal treatment of similarly situated persons, particularly affecting women and children. It is therefore necessary to establish a Uniform Civil Law that promotes equality and justice while respecting the freedom of religion.

2. The Government of Madhya Pradesh constituted a committee under the chairmanship of Hon'ble Justice (R.) Ranjana Prakash Desai to assess the need of implementing Uniform Civil Code in the State of Madhya Pradesh and based on the assessed need, suggest the contours of such law. The committee undertook comprehensive study of adjusting personal laws, judicial pronouncements and comparative practices across jurisdiction. After extensive consultation with all stakeholders and communities, the committee submitted its report recommending the implementation of Uniform Civil Code, to ensure equality, gender justice and harmonize myriad personal laws governing matters of marriage, divorce and inheritance.

3. The Bill seeks to provide a common legal framework ensuring equal rights for all residents, irrespective of religion. It aims to promote gender justice, equality and provide effective remedies in cases of divorce, maintenance and inheritance. The Bill also seeks to regulate and recognize live-in relationship, safeguard the rights of partners and children born from such relationship. By harmonizing personal laws in accordance with constitutional values of equality, dignity and non-discrimination, the Bill seeks to strengthen social harmony, national integration and the rule of law. Accordingly, the Proposed Bill seeks to achieve the aforesaid objective.

4. Hence this Bill.

BHOPAL:

DATED 19th JULY, 2026

GOUTAM TETWAL

Member-in-charge.